

FILED

FEB 27 2003

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CIVIL ACTION NO. 5:02-CV-227-BR(3)

DAVID W. DANIEL, CLERK
US DISTRICT COURT EDNC
BY DEP. CLERK

TONY JOHNSON,)
 Plaintiff,)
)
 vs.)
)
DRUCKER & FALK, LLC,)
 Defendant.)

)

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, SUMMARY JUDGMENT
Rules 12 and 56, F.R.Civ.P.

NOW COMES the defendant, Drucker & Falk, LLC ("D&F") and files this Memorandum In Support of its Motion to Dismiss, or, in the Alternative, for Summary Judgment. For the following reasons, D&F's Motion should be GRANTED and Plaintiff's claims should be DISMISSED WITH PREJUDICE.

Summary of the Nature of the Case

In this action, Plaintiff alleges claims of (i) racial discrimination under Title VII, 42 U.S.C. 1981, 1988 and 2000e, *et seq.*, (ii) intentional infliction of emotional distress under state law, (iii) negligent infliction of emotional distress under state law, and (iv) wrongful discharge under state law contrary to public policy. Plaintiff alleges that D&F failed to rehire him on the basis of race after Plaintiff had voluntarily resigned from the company only a few months earlier. (Complaint ¶¶ 12, 38; Plaintiff's EEOC charge attached hereto as Exhibit 1).

On December 16, 1999, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") and was issued a dismissal and notice of rights on June 16, 2000. (See Exhibit 2). The EEOC was unable to conclude that the information obtained by it established a violation of the statutes. Plaintiff subsequently filed suit in the Superior Court of Wake County, North Carolina on September 15, 2000. Following initial discovery, Plaintiff dismissed its action without prejudice on February 26, 2001. On February 26, 2002, Plaintiff refiled his action *pro se* in the Wake County Superior Court. D&F then removed the action to the United States District Court for the

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Eastern District of North Carolina on April 3, 2002. Charles J. Hutson, Esq. filed a Notice of Appearance on Plaintiff's behalf on June 6, 2002.

D&F respectfully contends that Plaintiff's claims should be dismissed for the following reasons as more fully explained below:

- (i) Plaintiff has failed to plead or demonstrate a *prima facie* case of race discrimination;
- (ii) Plaintiff cannot show D&F's justifications for refusing to consider rehiring Plaintiff were pretexts for discrimination, and
- (iii) Plaintiff has failed to sufficiently plead or produce any evidence to support his claims of negligent infliction of emotional distress, intentional infliction of emotional distress, or wrongful discharge under state law.

Statement of Pertinent Facts

Plaintiff was hired in August, 1995 as a maintenance technician at Stonehenge Apartments in Raleigh, North Carolina, which is an apartment community managed by D&F. (Hayworth Aff. ¶ 4, Plaintiff Depo., p. 17). On July 15, 1997, Plaintiff was transferred to Laurens Way Apartments ("Laurens Way") where he was promoted to the position of Maintenance Superintendent. (Hayworth Aff. ¶ 4). Laurens Way, located in Knightdale, North Carolina, is another apartment community managed by D&F. *Id.*

Maintenance Superintendents at D&F-managed apartment communities are responsible for the maintenance, repair, and upkeep of their apartment community. (Hayworth Aff. ¶ 3, and Exhibit 1 thereto; Berry Aff. ¶ 3). One of the Maintenance Superintendent's primary duties is to continually inspect buildings, grounds and common areas to identify needed preventive maintenance and to insure that the buildings and common areas are clean. *Id.* Plaintiff acknowledged the foregoing in his deposition. (Plaintiff Depo., pp. 138-139).

Beginning in September 1998, Lawrence Berry became the Regional Property Manager for multiple apartment communities managed by D&F, including Laurens Way. (Berry Aff. ¶ 4). Regional Property Managers are responsible for the overall operations of their communities, including assisting in personnel hiring decisions for the communities. (Berry Aff. ¶ 2). Regional Maintenance

Coordinators coordinate and assist with maintenance issues and personnel at apartment communities located in their region. (Hayworth Aff. ¶ 2). Since May 1998, Steven Hayworth has been the Regional Maintenance Coordinator for D&F-managed apartment communities located in North Carolina. Id.

During numerous visits to Laurens Way between September and December 1998, Mr. Berry found (i) the clubhouse bathrooms clogged up, dirty and out of supplies, (ii) the common area washer/dryer area dirty and full of trash, and (iii) the grounds around the property littered with trash. (Berry Aff. ¶ 4, Plaintiff Depo., pp. 43-56). Plaintiff admits in his deposition that Mr. Berry had to continually counsel Plaintiff to correct these items. Id.

On October 6, 1998, Lawrence Berry and Steven Hayworth conducted a formal Maintenance Inspection of the entire Laurens Way property. (Hayworth Aff. ¶ 5, Berry Aff. ¶ 5). Formal Maintenance Inspections are unannounced and are completed at least once a year on all D&F-managed apartment communities. Id. During this inspection, Mr. Hayworth and Mr. Berry noticed numerous deficiencies in the overall maintenance of the property. Id. They reported their findings on D&F's standard Maintenance Inspection Report (the "Inspection Report"). Id. (See also Exhibit 2 to Berry Aff.) The Inspection Report yielded a score of 76 points out of a possible 95.5 points (or 80%), which fell under the second lowest grading scale entitled "Needs Improvement." Id. Mr. Hayworth and Mr. Berry provided Plaintiff with a copy of the Inspection Report and discussed with him the contents thereof. Id.

A day or so later, Mr. Berry hand delivered a letter to Plaintiff explaining that while there was a lot of work to do, everything on the Inspection Report could be rectified, and Mr. Berry had confidence that there would be improvement in the near future. (Berry Aff. ¶ 6, and Exhibit 1 thereto). Mr. Berry also asked Plaintiff in this letter to provide a response on how each of the maintenance deficiencies noted on the Inspection Report were corrected, and a plan for preventing these areas from going below standard in the future. Id. Nevertheless, Plaintiff never provided a response to the Inspection Report, nor did he provide a plan to prevent future maintenance lapses. Id. Plaintiff did,

however, go searching for a new job. (Plaintiff Depo., pp. 155-156).

In December 1998, without telling anyone at D&F, Plaintiff accepted a job as the Maintenance Superintendent at Laurel Springs Apartments. *Id.* Laurel Springs Apartments are located in Raleigh, North Carolina and managed by Post Properties, which has no relation to D&F. (Plaintiff Depo., p. 94). Plaintiff was supposed to begin working at Laurel Springs on December 21, 1998. *Id.* By letter dated December 7, 1998, Plaintiff gave Laurens Way a two-week resignation notice stating that his last day would be December 21, 1998 (the same day he started at Laurel Springs). (Hayworth Aff. ¶ 6; Berry Aff. ¶ 7 and Exhibit 3 thereto). However, Plaintiff did not remain at Laurens Way through December 21, 1998. *Id.* Instead, he walked off the job the week of December 14, 1998. *Id.* This left Laurens Way without a maintenance superintendent less than two weeks before Christmas. *Id.*

When a Maintenance Superintendent position becomes available at an apartment community, generally, the on-site resident manager, the Regional Property Manager, and the Regional Maintenance Coordinator will be involved in the search for, assessment of, and hiring of qualified candidates for the position. (Hayworth Aff. ¶ 7; Berry Aff. ¶ 8). D&F's policy and preference is to try to fill the position with someone currently working either at that community or another D&F community. *Id.* In keeping with that policy and preference, Lawrence Berry approved the hiring of Eugene Johnson, who is African-American, to replace Plaintiff as Superintendent at Laurens Way. Eugene Johnson was transferred and promoted from another D&F-managed apartment community, where he had been a maintenance technician. *Id.* Steven Hayworth had actually suggested to Lawrence Berry that he approve Eugene Johnson's transfer and promotion to Laurens Way. *Id.*

Two months after Plaintiff had resigned from Laurens Way, and while still working for Post Properties at Laurel Springs Apartments, Plaintiff contacted D&F's Vice President, Kellie Falk-Tillett, about being rehired as a Maintenance Superintendent with D&F. (Falk-Tillett Aff. ¶ 6; Plaintiff Depo., pp. 166-168). Mrs. Falk-Tillett was the Regional Property Manager for Laurens Way prior to Lawrence Berry and had actually approved Plaintiff's promotion to Laurens Way in 1997. (Falk-Tillett Aff. ¶¶ 2, 6). Plaintiff claims in his deposition that he wanted to leave Laurel Springs Apartments

because he and his manager were not seeing “eye to eye on things.” (Plaintiff Depo., p. 169). Plaintiff did not know if D&F even had openings for a Maintenance Superintendent, nor did he fill out an employment application for any such position. (Plaintiff Depo., p. 178-180). Likewise, Mrs. Falk-Tillett was not aware of any open Superintendent positions. (Falk-Tillett Aff. ¶ 6; Plaintiff Depo., p. 168). She was also not aware of the circumstances surrounding Plaintiff’s resignation from Laurens Way. (Falk-Tillett Aff. ¶ 6). She therefore advised Plaintiff to contact Steven Hayworth, the Regional Maintenance Coordinator for apartment communities in North Carolina managed by D&F. *Id.*

Plaintiff then called Mr. Hayworth to express his desire to return to D&F. (Hayworth Aff. ¶ 8). Mr. Hayworth knew Plaintiff had just resigned two months earlier from Laurens Way without completing his two-week notice. *Id.* He was thus surprised that Plaintiff was seeking to return to D&F as a Maintenance Superintendent. *Id.* In addition, based on Plaintiff’s performance at Laurens Way in the months before his resignation and his failure to respond to the Inspection Report, Mr. Hayworth did not feel comfortable placing Plaintiff in a Maintenance Superintendent position. *Id.* However, Mr. Hayworth was not aware of any openings at that time, and simply told Plaintiff he would see if any positions became available. *Id.* Plaintiff spoke to Mr. Hayworth two or three additional times during April and May 1999, but there were no openings during that period. *Id.*

The first opening for a Maintenance Superintendent at a D&F managed apartment community arose in June 1999 at Crosstimbers Apartments. (Hayworth Aff. ¶ 9). However, D&F never advertised or accepted outside applications for this position. *Id.* Consistent with company policy, D&F transferred James Blankenship from another D&F managed apartment community to take over at Crosstimbers. *Id.*

On June 1, 1999, Plaintiff quit his job at Laurel Springs Apartments without any advance notice to his manager, and without having found another job. (Plaintiff Depo., pp. 189-190). When asked in his deposition why he quit that job before he had found another one, he replied: “Well, I shot myself in the foot on that one.” *Id.* About two weeks later, by letter dated June 17, 1999, Plaintiff notified D&F that he still wanted to work for a D&F-managed apartment community, and would be willing to work

in the State of Virginia, if necessary. (Hayworth Aff. ¶ 10, and Exhibit 2 thereto). Mr. Hayworth then met with Kellie Falk-Tillett and Lawrence Berry to discuss Plaintiff's letter and desire to return to D&F. Id. Mr. Hayworth asked Mr. Berry if he would consider hiring of Plaintiff for one of his apartment communities the next time an opening arose. (Hayworth Aff. ¶ 10; Berry Aff. ¶ 9). Mr. Berry said he would not be willing to hire Plaintiff as a Maintenance Superintendent since he felt Plaintiff had failed to give enough attention to detail when he supervised the maintenance at Laurens Way, Plaintiff had never provided a response to the Inspection Report, and Plaintiff had failed to honor his two-week notice of resignation during the middle of the holiday season. Id. After Kellie Falk-Tillett reviewed Plaintiff's employment file and spoke with Lawrence Berry and Steve Hayworth, she discovered for the first time that Plaintiff had failed to fulfill his two-week notice period. (Falk-Tillett Aff. ¶ 7). She then instructed Mr. Hayworth to tell Plaintiff in writing that he would not be considered for rehire as a Maintenance Superintendent due to his failure to fulfill his notice period, which Mr. Hayworth did by letter dated June 22, 1999. (Falk-Tillett Aff. ¶ 7, Hayworth Aff. ¶ 10 and Exhibit 3 thereto).

ARGUMENT

I. PLAINTIFF'S ALLEGATIONS AND EVIDENCE OF RACIAL DISCRIMINATION FAIL TO MEET THE STANDARD REQUIRED BY THE BURDEN SHIFTING SCHEME OF MCDONNELL-DOUGLAS AND, AS SUCH, SUMMARY JUDGMENT IN FAVOR OF D&F IS APPROPRIATE ON THIS ISSUE.

As shown below, Plaintiff has failed to satisfy the evidentiary burdens incumbent upon him to surpass the summary judgment hurdle for Plaintiff's discrimination-in-hiring claim. To survive summary judgment, Plaintiff may satisfy either of two tests. First, Plaintiff may present direct evidence that race was a determining factor in Defendant's employment decisions. See Moyer v. Smurfit-Stone Container Corp., 2002 WL 31654526 (M.D.N.C. 2002). To do this, Plaintiff must present "evidence of conduct or statements that both reflect directly the alleged discriminatory attitude and that bear directly on the contested employment decision." Fuller v. Phipps, 67 F.3d 1137, 1142 (4th Cir.1995). Second, where Plaintiff is unable to present direct evidence of discrimination, Plaintiff may meet his

burden using circumstantial evidence, following the McDonnell Douglas burden-shifting scheme. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

Plaintiff has neither pleaded nor tendered any evidence - direct or indirect - that even hints at discriminatory attitude, animus, or intent. In fact, he cannot even identify one person at D&F he believes actually discriminated against him because of race:

Q: Is there any particular person at Drucker & Falk that you believe really discriminated against you because you were black in 1999?

A: No.

(Plaintiff Depo., p. 271).

Accordingly, the McDonnell Douglas framework is the only mechanism that could apply to Plaintiff's case. Under such deliberate scrutiny, Plaintiff's claims cannot survive and should be dismissed with prejudice.

A. Plaintiff has not made out a *prima facie* case of racial discrimination.

To establish a claim for discrimination-in-hiring based on race, the plaintiff must carry the initial burden of establishing a *prima facie* case of racial discrimination. McDonnell Douglas, 411 U.S. at 802. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. *Id.* Plaintiff has failed to meet this initial burden with regard to the second and fourth elements.

First, Plaintiff did not apply for a particular position for which D&F was seeking applicants. (Plaintiff Depo., p. 178-180). In February 1999, when Plaintiff contacted Kellie Falk-Tillett and Steven Hayworth about being rehired as a Maintenance Superintendent, neither Plaintiff, Mrs. Falk-Tillett, nor Mr. Hayworth knew of any openings. (Falk-Tillett Aff. ¶ 6; Hayworth Aff. ¶ 8, Plaintiff Depo., p. 168, 179). The first opening for a Maintenance Superintendent was at Crosstimbers Apartments located in

Morrisville, North Carolina. (Hayworth Aff. ¶¶ 8, 9). Plaintiff alleges in his complaint that Steven Hayworth told him about the Crosstimbers position and would refer Plaintiff's resume and application for that position. (Complaint ¶¶ 20, 21). However, that is inconsistent with Steven Hayworth's sworn testimony and Plaintiff's own sworn testimony. In his affidavit, Mr. Hayworth states that he did not become aware of the Crosstimbers position until June 1999, and that his last conversation with Plaintiff was in May 1999. (Hayworth Aff. ¶ 9). Further, Plaintiff admits in his deposition that he never filled out an application with D&F. (Plaintiff Depo., pp. 179-180). Finally, Plaintiff's own letter to D&F dated June 17, 1999 confirms that Plaintiff was never told of any open positions:

“In February I spoke with Kellie Falk-Tillett about resuming my employment with Drucker & Falk, she suggested that I contact Steve Hayworth. After initial contact with Steve, he stated that nothing was available and he would keep me in mind for future employment. *I have been in contact with Steve on numerous occasions and still nothing is available* (emphasis added).”

(See Exhibit 2 to Hayworth Aff.). In fact, D&F never advertised or accepted outside applications for the Crosstimbers position. (Hayworth Aff. ¶ 9). Consistent with D&F's policy and preference of trying to fill Superintendent positions with current employees, D&F transferred James Blankenship to Crosstimbers from another apartment community managed by D&F, where he had been the Superintendent. *Id.*

Plaintiff not only failed to apply for a job for which D&F was seeking applicants, Plaintiff was not qualified to be rehired as a Maintenance Superintendent. Plaintiff acknowledges that a Maintenance Superintendent must continually inspect buildings, grounds and common areas to identify needed preventive maintenance and to insure that the buildings and common areas are clean. (Plaintiff Depo., pp. 138-139). He then admits that the buildings, grounds and common areas at Laurens Way were frequently not kept clean during his tenure as Superintendent. (Plaintiff Depo. pp. 43-56, 113-123). In addition, Plaintiff acknowledges that giving two weeks notice of resignation “is the right thing to do, especially when you want to be hired back into a company.” (Plaintiff Depo. pp. 157-158). He then admits he failed to honor his two-week notice to Laurens Way. *Id.* Plaintiff's spotty performance

as Superintendent along with his unprofessional conduct in failing to honor his two-week notice period made Plaintiff unqualified to return to D&F as a Superintendent. As shown above, Plaintiff has failed to establish a *prima facie* case of race discrimination, and Plaintiff's claims should be dismissed on that basis.

B. D&F has successfully demonstrated legitimate, non-discriminatory reasons for refusing to consider rehiring Plaintiff.

If the plaintiff is able to establish a *prima facie* case of discrimination, the burden then shifts to the defendant to provide a legitimate, nondiscriminatory reason for its action. See McDonnell Douglas at 802-04. The defendant's burden is one of production, not persuasion. See Henson v. Liggett Group, Inc., 61 F.3d 270, 274-75 (4th Cir. 1995).

Plaintiff has not established a *prima facie* case of discrimination. Even if the Court finds otherwise, D&F has demonstrated legitimate, non-discriminatory reasons for refusing to consider rehiring Plaintiff as a Maintenance Superintendent. First, in the months before he resigned as Superintendent of Laurens Way, Lawrence Berry had to counsel Plaintiff numerous times about the condition of the property. (Berry Aff. ¶ 4, Plaintiff Depo., pp. 43-56). Second, Lawrence Berry and Steven Hayworth found multiple deficiencies in the maintenance and upkeep of the property during the formal maintenance inspection on October 6, 1998. (Hayworth Aff. ¶ 5, Berry Aff. ¶ 5 and Exhibit 2 thereto; Plaintiff Depo., pp. 113-123). Then, Plaintiff ignored the requests of his supervisors to provide a response on how each of the maintenance deficiencies noted on the Inspection Report were corrected, and a plan for preventing these areas from going below standard in the future. (Berry Aff. ¶ 6, and Exhibit 1 thereto). Third, Plaintiff had quit his position as a Maintenance Superintendent only a few months before. (Hayworth Aff. ¶ 6; Berry Aff. ¶ 7 and Exhibit 3 thereto). Fourth, when Plaintiff left Laurens Way, he only gave two weeks notice and then failed to finish the two-week period, leaving Laurens Way without a Superintendent in the middle of the Holiday season. *Id.* Fifth, with regard to the Crosstimbers Superintendent position, D&F hired a qualified employee from within the company consistent with its policy. (Hayworth Aff. ¶ 9). D&F has thus met its burden to demonstrate

legitimate, non-discriminatory reasons for refusing to consider rehiring Plaintiff as a Maintenance Superintendent.

C. Plaintiff has failed to demonstrate that D&F's justifications for refusing to consider rehiring Plaintiff as a Maintenance Superintendent were pretextual.

Because D&F has offered legitimate, non-discriminatory reasons which would, if believed by the fact-finder, support its actions, the burden shifts back to Plaintiff to "establish that he was the victim of intentional discrimination by showing that the employer's proffered explanation is unworthy of credence." Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000) (citing Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, (1981)). The Fourth Circuit has held that, to establish that an employer's justification is pretext for discrimination, a plaintiff must prove "'both that the reason was false, and that discrimination was the real reason' for the challenged conduct." DeJarnette v. Corning Inc., 133 F.3d 293, 298 (4th Cir.1998) (quoting Jiminez v. Mary Washington College, 57 F.3d 369 (4th Cir.1995))

Plaintiff has produced no evidence to show D&F's reasons for refusing to consider rehiring Plaintiff were false. In fact, Plaintiff specifically admits that Lawrence Berry had to counsel him numerous times about the condition of the property between September and December 1998. (Plaintiff Depo. pp. 43-56). Plaintiff also admits there were multiple deficiencies in the upkeep of the property during the formal Maintenance Inspection on October 6, 1998. (Plaintiff Depo. pp. 113-123). Further, Plaintiff acknowledges that giving two weeks notice of resignation "is the right thing to do, especially when you want to be hired back into a company." (Plaintiff Depo. pp. 157-158). He then admits that he failed to honor his two-week notice to Laurens Way. *Id.* Incidentally, Plaintiff also failed to give Laurel Springs Apartments any notice before he quit from that apartment community. (Plaintiff Depo., pp. 189-190).

Plaintiff has also failed to produce any evidence of intentional discrimination. Plaintiff has failed to produce any evidence tending to prove that the persons who made the decisions upon which Plaintiff bases his claims for race discrimination were motivated by race in making these decisions. In

fact, Plaintiff admits that there is no one at D&F he actually believes discriminated against him because of race. (Plaintiff Depo., p. 271). Plus, after Plaintiff quit at Laurens Way, both Lawrence Berry and Steven Hayworth approved the transfer and promotion of an African-American, Eugene Johnson, as Plaintiff's replacement. (Hayworth Aff. ¶ 7, Berry Aff. ¶ 8).

The only explanation Plaintiff provides for his claim of discrimination is his belief that D&F rehired five white individuals, Chris Seagrove, Denise Cook, Mike Hudda, Tony Bains, and Ralph Ray, who had "walked off their jobs, either prior to the completion of a notice period, or with no notice period given whatsoever." (Complaint ¶¶ 32-37, Plaintiff Depo., p. 261). However, Plaintiff admits in his deposition that he has no idea whether Denise Cook, Mike Hudda, Tony Bains and Ralph Ray gave advance notice of resignation or whether they completed their notice period. (Plaintiff Depo., pp. 225, 254, 257, 258, 260, 261). In fact, each of these individuals did give two-weeks notice before they resigned, and they each completed the two-week period. (Falk-Tillett Aff. ¶¶ 3, 4; Hayworth Aff. ¶ 12, Welch Aff. ¶ 2; Waddill Aff. ¶ 2). The only one of these individuals who resigned without giving and completing two-weeks notice was Chris Seagroves. (Hayworth Aff. ¶ 13). Before his resignation, Mr. Seagroves had been the Maintenance Superintendent at the Groves Apartments, which are also managed by D&F. *Id.* Mr. Seagroves resigned because he felt he could not handle the responsibility of being Superintendent at that property (Plaintiff Depo., p. 229). Mr. Seagroves, though, was not hired back as a Maintenance Superintendent. He was subsequently hired at Laurens Way as Plaintiff's maintenance assistant, which is a lower paying and less responsible position. (Hayworth Aff. ¶ 13) Furthermore, Plaintiff admits that Mr. Seagroves performed well as his assistant (Plaintiff Depo., p. 231). In sum, Plaintiff cannot show that similarly situated white individuals were treated any differently than Plaintiff was treated.

Plaintiff has failed to make out the elements of a *prima facie* case for his race discrimination-in-hiring claim. Summary judgment in favor of D&F would be proper on that ground alone. Furthermore, Plaintiff has failed to rebut D&F's legitimate, non-discriminatory reasons for refusing to consider rehiring Plaintiff. Not only has Plaintiff failed to offer evidence showing that these reasons

were mere pretext, he has failed to offer any evidence tending to demonstrate that discrimination was the "real reason" for the decision. Summary judgment in favor of D&F is, therefore, appropriate.

II. PLAINTIFF HAS NOT SUFFICIENTLY PLEAD NOR DEMONSTRATED A CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

In order to state a claim for negligent infliction of emotional distress under North Carolina law, a plaintiff must allege in his complaint that "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress (often referred to as "mental anguish"), and (3) the conduct did in fact cause the plaintiff severe emotional distress." Johnson v. Ruark Obstetrics & Gynecology Assoc., P.A., 327 N.C. 283, 304, 395 S.E.2d 85, 97 (1990). Plaintiff failed to allege in his complaint any of the required elements of the claim of negligent infliction of emotional distress, and the same should be dismissed. (See Delk v. Arvin Meritor, Inc., 179 F.Supp.2d 615, 626 (W.D.N.C. 2002) "*North Carolina requires that a plaintiff asserting a claim for negligent infliction of emotional distress plead and prove that it was reasonably foreseeable to the defendants that the plaintiff could suffer severe emotional distress as a result of their conduct.*").

Even if Plaintiff's pleading was sufficient, he has not produced or forecast any evidence to show that he suffered from severe emotional distress. Although Plaintiff may have felt rejected and disappointed in learning he would not be considered for rehire as a Superintendent (see Plaintiff Depo., p. 271), rejection and disappointment do not amount to severe emotional distress. Plaintiff must show that he suffered from "neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so." Johnson, 327 N.C. at 304, 395 S.E.2d at 97. However, Plaintiff actually admits in his deposition that he never suffered any severe emotional distress:

Q: You never went to see a doctor about any distress, did you?

A: No.

Q: Were you ever diagnosed by any doctor for any type of emotional distress?

A: No.

Q: Did you ever suffer any symptoms at all of distress?

A: No.

(Plaintiff Depo., p. 272).

Since Plaintiff has failed to establish that he suffered from severe emotional distress, D&F respectfully contends that summary judgment in its favor as to this cause of action is appropriate.

III. PLAINTIFF HAS NOT SUFFICIENTLY PLEAD NOR DEMONSTRATED A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

To prevail on a claim for intentional infliction of emotional distress, a plaintiff must prove that defendant engaged in (1) extreme and outrageous conduct, (2) which was intended to cause, (3) and did in fact cause severe emotional distress. Dickens v. Puryear, 302 N.C. 437, 452, 276 S.E.2d 325, 335 (1981). Extreme and outrageous conduct has been described as conduct which is "utterly intolerable in a civilized community." Hogan v. Forsyth Country Club Co., 79 N.C.App. 483, 493, 340 S.E.2d 116, 123 (1986). Plaintiff failed to plead any of these elements in his Verified Complaint, thereby warranting dismissal of this claim.

Further, Plaintiff has failed to establish that any conduct attributable to D&F was "utterly intolerable in a civilized community." The only conduct he even makes reference to is D&F's refusal to consider his rehiring. (Plaintiff Depo., p. 272). However, refusing to consider Plaintiff for rehire to a position from which he just resigned under the conditions described above is not only tolerable, but justified. In addition, Plaintiff admits in his deposition that no one at D&F actually intended Plaintiff to suffer distress:

Q: You think somebody at Drucker & Falk actually meant for you to suffer distress?

A: Do I think they meant it?

Q: Yes. Do you think somebody at Drucker & Falk actually

intended that you suffer some deep, severe emotional distress?

A: No.

(Plaintiff Depo., p. 273). Finally, as explained above, Plaintiff has failed to establish that he suffered from severe emotional distress. As such, D&F respectfully contends that summary judgment in its favor as to this cause of action is appropriate.

IV. PLAINTIFF HAS NOT SUFFICIENTLY PLEAD NOR DEMONSTRATED A CLAIM FOR WRONGFUL TERMINATION

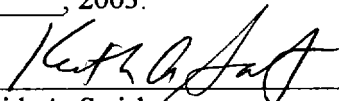
To prevail on a claim for wrongful termination under North Carolina law, a plaintiff must allege and prove that (i) he either participated in conduct protected by law or refused to participate in conduct which violated public policy, and (ii) his participation in protected conduct or refusal to participate in unlawful conduct or which violated public policy was a substantial factor in defendant's decision to terminate the plaintiff's employment. See *e.g. Brooks v. Stroh Brewery Co.*, 95 N.C.App. 226, 230, 382 S.E.2d 874, 878, disc. review denied, 325 N.C. 704, 388 S.E.2d 449 (1989).

Plaintiff failed to allege in his complaint, and failed to produce any evidence to support any of the required elements of this claim. Furthermore, and most obvious, Plaintiff admits that he voluntarily resigned, thereby precluding any claim based on termination.

CONCLUSION

D&F is entitled to judgment as a matter of law on all claims brought by Plaintiff because Plaintiff has failed to plead or demonstrate a *prima facie* case of race discrimination; Plaintiff cannot show D&F's justifications for refusing to rehire Plaintiff were pretexts for discrimination, and Plaintiff has failed to plead or produce any evidence to support claims of negligent infliction of emotional distress, intentional infliction of emotional distress, or wrongful discharge under state law. Since all of Plaintiff's claims fail, Defendant D&F respectfully requests that summary judgment be granted in its favor as to all claims.

This is the 27 day of February, 2003.



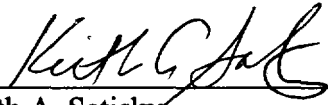
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading or paper in the foregoing matter on counsel of record for all other parties to this cause by depositing a copy of same in the United States Mail, postage prepaid, in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure, addressed to the following:

Charles J. Hutson, Esq.
116 West Main Street
Durham, NC 27701

This is the 27 day of February, 2003.



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THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,)	
Plaintiff,)	
)	
vs.)	APPENDIX TO MEMORANDUM
)	OF LAW IN SUPPORT OF DEFENDANT'S
DRUCKER & FALK, LLC,)	MOTION TO DISMISS, OR, IN THE
Defendant.)	ALTERNATIVE, FOR SUMMARY JUDGMENT

<u>TAB</u>	<u>DOCUMENT</u>
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- | | |
|----|---|
| 1. | <u>Exhibit 1</u> – Plaintiff's EEOC Charge |
| 2. | <u>Exhibit 2</u> – EEOC Dismissal and Notice of Rights |
| 3. | Affidavit of Steven Hayworth, Regional Maintenance Coordinator, D&F |
| 4. | Affidavit of Lawrence Berry, former Regional Property Manager, D&F |
| 5. | Affidavit of Kellie Falk-Tillett, Vice President, D&F |
| 6. | Affidavit of Howard Waddill, Regional Maintenance Supervisor, D&F |
| 7. | Affidavit of Gerald Welch, Maintenance Superintendent, D&F |
| 8. | Excerpts from Plaintiff's Deposition |

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CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

☐ FEPA
☒ EEOC

CHARGE NUMBER

State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

Mr. Tony E. Johnson

HOME TELEPHONE (Include Area Code)

(919) 845-5191

STREET ADDRESS

CITY, STATE AND ZIP CODE

6520-108 Golden Lantern Court, Raleigh, NC 27613

DATE OF BIRTH

07/15/1963

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

DRUCKER & FALK, LLC

NUMBER OF EMPLOYEES, MEMBERS

Cat D (501 +)

TELEPHONE (Include Area Code)

(919) 846-7300

STREET ADDRESS

CITY, STATE AND ZIP CODE

7200 STONEHENGE DRIVE, SUITE 211, RALEIGH, NC 27613-1620

COUNTY

183

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST

06/22/1999 06/22/1999

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. On or about June 22, 1999, I was informed that I would not be hired for a position with Drucker & Falk, LLC. I had previously been employed by the company from August 7, 1995 through December. The company employs several locations.

II. In a letter dated June 22, Steven Haywood, Maintenance Coordinator, stated that I had previously left their employ without completeing my two weeks notice.

I have not seen a formal policy regarding rehire. I believe the company rehires persons who had previously worked for them if their performance was good.

III. I beleive I was discriminated against due to my race/Black in violation of Title VII of the Civil Rights Act of 1964, as amended.

EXHIBIT

RECEIVED
U.S. EEOC
RALEIGH AREA OFFICE
JUN 16 2 28 PM '99

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

12-16-99

[Signature]

Date

Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Month, day and year)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Tony Johnson
604 KEY WEST MEWS
CARY, NC 27513

From: E.E.O.C
Raleigh Area Office
1309 Annapolis Drive
Raleigh, NC 27608-2129

☐ On behalf of a person aggrieved whose identity is **CONFIDENTIAL** (29 C.F.R. 1601.7(a))

Charge Number

141A00150

EEOC Representative

Thomas M. Colclough

Telephone Number

(919) 856-4075

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ We cannot investigate your charge because it was not filed within the time limit required by law.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You had 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state) _____

- NOTICE OF SUIT RIGHTS -

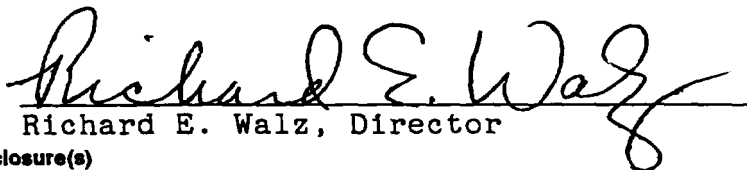
(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

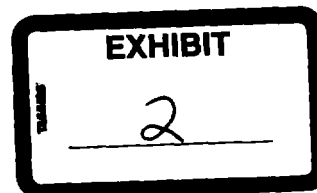
If you file suit based on this charge, please send a copy of your court complaint to this office.

On Behalf of the Commission


Richard E. Walz, Director
Enclosure(s)

6/16/02
(Date)

cc: DRUCKER & FALK, LLC
7200 STONEHENGE DRIVE
SUITE 211
RALEIGH, NC 27613-1620



THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,
Plaintiff,

vs.

DRUCKER & FALK, LLC,
Defendant.

AFFIDAVIT OF STEVEN HAYWORTH

The undersigned, Steven Hayworth, being first duly sworn, deposes and says that:

1. I am a resident of Wake County, North Carolina.
2. Since May 1998, I have been a Regional Maintenance Coordinator for Drucker & Falk, Inc. As Regional Maintenance Coordinator, I help coordinate and assist with maintenance issues and personnel at apartment communities located in North Carolina managed by Drucker & Falk, LLC ("D&F").
3. The Maintenance Superintendents (sometimes called Supervisors) at apartment communities managed by D&F are responsible for all upkeep, maintenance and repair work at their apartment community. As shown on the Superintendent job description attached hereto as **Exhibit 1**, which is part of D&F's Property Operations Manual, part of the Maintenance Superintendent's primary responsibilities are to continually inspect buildings, grounds and common areas to identify needed preventive maintenance and to insure that the buildings and common areas are clean.
4. I am familiar with the employment record of Tony Johnson, the Plaintiff in the above-styled case. Tony Johnson was hired on August 7, 1995 as a maintenance technician at Stonehenge Apartments in Raleigh, North Carolina, which is an apartment community managed by D&F. Maintenance technicians work under the Superintendents and perform maintenance and repair work at the community. On July 15, 1997, Mr. Johnson was transferred to Laurens Way Apartments ("Laurens Way") where he was promoted to the position of Maintenance Superintendent. Laurens Way, located in Knightdale, North Carolina, is another apartment community managed by D&F.

5. On October 6, 1998, I, along with Lawrence Berry, then the Regional Property Manager with management responsibility over Laurens Way, conducted a formal Maintenance Inspection of the entire Laurens Way property. A formal Maintenance Inspection is unannounced and is completed at least once a year on all D&F-managed apartment communities. During this inspection, Mr. Berry and I noticed numerous deficiencies in the overall maintenance of the property. Mr. Berry and I reported the findings of our inspection on D&F's standard Maintenance Inspection Report (the "Inspection Report"). The Inspection Report yielded a score of 76 points out of a possible 95.5 points (or 80%). This score fell under the grading scale entitled "Needs Improvement," which, as shown on the Inspection Report, is the second lowest on a five level grading scale. Mr. Berry and I provided Tony Johnson with a copy of the Inspection Report and discussed the contents thereof with Mr. Johnson.

6. By letter dated December 7, 1998, Tony Johnson gave a two-week resignation notice stating that his last day would be December 21, 1998. Despite his notice, Tony Johnson did not remain on the job at Laurens Way through December 21, 1999. Instead, Tony Johnson walked off the job the week of December 14, 1998, leaving Laurens Way unexpectedly without a maintenance supervisor less than two weeks before Christmas, which is a busy time of year in the maintenance of an apartment community.

7. When a Maintenance Superintendent position becomes available at an apartment community managed by D&F, generally the on-site resident manager, the Regional Property Manager, and the Regional Maintenance Coordinator will be involved in the search for, assessment of, and hiring of qualified candidates for the position. D&F's policy and preference is to try to fill the position with someone currently working either at that community or another D&F community. In keeping with that policy and preference, Eugene Johnson, who is African-American, was hired to replace Tony Johnson as Superintendent at Laurens Way. Eugene Johnson was transferred and promoted from another D&F-managed apartment community, where he had been a maintenance technician. I had actually suggested to Lawrence Berry that he approve Eugene Johnson's transfer and promotion to Laurens

Way, which he did.

8. In or about February 1999, Mr. Johnson contacted me about being rehired at an apartment community managed by D&F. Mr. Johnson had not filled out an employment application for any particular position, and did not mention a particular position he was interested in, nor a particular location where he wanted to work. Although he did not specifically mention it, I assumed he was looking for another Maintenance Superintendent position. Frankly, I was surprised that Mr. Johnson was seeking to return to the company as a Superintendent since he had just resigned two months earlier without completing his two-week resignation notice. In addition, based on his performance at Laurens Way in the months before his resignation, and his failure to respond to the Inspection Report, I did not feel comfortable placing Mr. Johnson in a Maintenance Superintendent position. Regardless, I was not aware of any openings for a Superintendent, and simply told Mr. Johnson that I would see if any positions became available. Mr. Johnson and I spoke two or three additional times during April and May 1999, but I was not aware of any openings for a Superintendent during that period.

9. Contrary to allegations contained in Tony Johnson's complaint, at no time did I ever indicate to him that a Maintenance Superintendent position had become available at Crosstimbers Apartments in Morrisville, North Carolina. The first time I became aware of such an opening was in early June 1999, when Stacy Frazier, then Maintenance Superintendent, gave notice of resignation. This was after my last conversation with Tony Johnson. Further, D&F never advertised or accepted outside applications for this position. Consistent with company policy and preference, D&F transferred James Blankenship from another D&F community to replace Mr. Frazier at Crosstimbers. James Blankenship had been the Maintenance Superintendent at the Groves Apartments in Raleigh, North Carolina.

10. I then received a letter from Tony Johnson dated June 17, 1999, a true copy of which is attached hereto as **Exhibit 2**, in which Mr. Johnson again expressed his desire to work at a D&F-managed community and also a willingness to work in Virginia. He also asked for a written response if

he was not going to be considered for rehire. I then met with Kellie Falk-Tillett and Lawrence Berry to discuss Mr. Johnson's letter and desire to return to D&F. I asked Lawrence Berry if he would consider hiring Mr. Johnson for one of his apartment communities the next time an opening arose. Mr. Berry told me that he would not be willing to hire Mr. Johnson as a Maintenance Superintendent since he felt Plaintiff had failed to give enough attention to detail when he supervised the maintenance at Laurens Way, Mr. Johnson had never provided a response to the Inspection Report, and Mr. Johnson had failed to honor his two-week notice of resignation in the middle of the holiday season. Mrs. Falk-Tillett, Mr. Berry, and I then reviewed Mr. Johnson's employment file. After Mrs. Falk-Tillett discovered that Plaintiff had failed to fulfill his two-week notice period, she instructed me to tell Mr. Johnson in writing that he would not be considered for rehire as a Maintenance Superintendent due to his failure to fulfill his notice period. Thereupon, by letter dated June 22, 1999, a true copy of which is attached hereto as **Exhibit 3**, I informed Mr. Johnson that he would not be considered for rehire due to his failure to fulfill his notice period.

11. Mr. Johnson's race was not a factor in the decision not to consider Mr. Johnson for rehire as a Maintenance Superintendent.

12. I am familiar with the employment record of Ralph Ray. Mr. Ray resigned in May 1998 as the Maintenance Superintendent of Quail Ridge Apartments in Raleigh, North Carolina, which are managed by D&F. He had worked for D&F for approximately twenty years, and, in my opinion, was one of the best Maintenance Superintendents at D&F. I have personal knowledge that Mr. Ray gave two-weeks notice before he resigned and that he fulfilled his two-week notice period. Consistent with my own recollection is the Payroll Information & Record for Ralph Ray completed May 21, 1998, a true copy of which is attached hereto as **Exhibit 4**, which shows Mr. Ray gave notice of resignation with his last day being May 21, 1998. Payroll Information & Records are regularly kept for each employee in the regular course of D&F's business to reflect any changes in an employee's payroll status, and are prepared at or near the time the change takes place. In June 1999, Mr. Ray was hired as the Maintenance Superintendent at Wedgewood Apartments, which are managed by

D&F.

13. I am familiar with the employment record of Chris Seagroves. In 1996, Mr. Seagroves resigned as the Maintenance Superintendent of the Groves Apartments located in Raleigh, North Carolina, which are managed by D&F. According to Mr. Seagroves, he resigned because he felt he could not handle the responsibility of being Superintendent at that property. Mr. Seagroves resigned without giving and completing two-weeks notice. In December 1997, Mr. Seagroves was hired at Laurens Way as Tony Johnson's maintenance assistant. A maintenance assistant receives less pay and has less responsibility than a Maintenance Superintendent.

14. I know the matters stated herein of my own knowledge, except as to those matters stated on information and belief and as to those I believe them to be true. In addition, I am over twenty-one, under no disability, and am competent to testify to the matters stated herein.

Steven Hayworth
Steven Hayworth

Sworn to and subscribed before me this

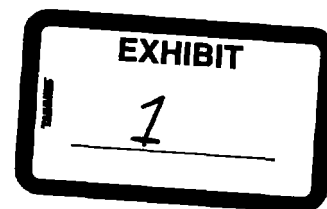
27th day of February, 2003.
Brenda P. Milam
NOTARY PUBLIC

My Commission Expires: 9/27/05
g:\d&f\johnson\aff-sh.doc





Personnel

THE SUPERINTENDENT'S DUTIES

Scope and Purpose

The Superintendent/Chief Engineer is responsible for the physical upkeep of the property. He/she must maintain and operate all mechanical equipment excluding those specifically designated for "contract" repair and service. The Superintendent/Chief Engineer must supervise all maintenance employees. He/she is under the direction of the resident manager.

Duties and Responsibilities

1. Train and be responsible for work performed by all staff members under his/her direction.
2. Hire and terminate employees in accordance with Drucker & Falk, LLC policy and under the direction of the resident manager.
3. Counsel maintenance employees to improve their work and work attitudes.
4. Establish schedules and assign personnel routine maintenance tasks.
5. Make certain that the community has maintenance coverage at all times in case of emergencies or emergency work requests.
6. Perform all duties with the highest consideration for safety, and train and be responsible for all staff members to do so as well.
7. Continually inspect buildings, grounds, and common areas to identify needed preventive maintenance, maintenance, to insure that the buildings and common areas are clean and that the grounds are being properly maintained, and to identify current and potential safety hazards.
8. Maintain a clean, safe, and well organized shop and equipment storage area.
9. Operate and maintain furnaces, AC equipment, auxiliaries, and other equipment in the buildings, as well as maintenance and grounds equipment. Insure that all equipment is operating in a safe and efficient manner.
10. Replace air filters as required.
11. Perform necessary maintenance and repairs in apartments with work orders.
12. Strive to see that all work orders are completed within 24 hours.
13. Ready vacant apartments for occupancy following Drucker & Falk, LLC guidelines.
14. Schedule contractors for maintenance related work.

D 0121

15. Secure bids and proposals as directed.
16. Use contract labor whenever it becomes cost effective, following approval by the Resident Manager or Property Manager.
17. Strictly follow established budgetary guidelines.
18. Follow all Drucker & Falk, LLC purchasing directives and procedures.
19. Maintain operating manuals, warranty records, and other materials pertaining to general inventory and parts replacement and availability.
20. Keep abreast of developments in the field, including new products, and new and less expensive ways of making repairs.
21. Always maintain the highest standards of resident relations.

PERSONNEL
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MAIN
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GENERAL MAINTENANCE

D 0122

June 17, 1999

Mr. David C. Falk, Sr.
Mrs. Kellie Falk-Tillett
Mr. Jere Buch
Mr. Steve Hayworth
7200 Stonehenge Drive
Suite 211
Raleigh, NC 27613

Dear Steve:

August 7, 1995, until July 14, 1997, I worked as a maintenance technician at Stonehenge Apartments and on July 15, 1997 I was transferred to Laurens Way Apartments with the title of maintenance supervisor until December 17, 1998.

The three years I was employed with Drucker & Falk was rewarding, not only was my career enhanced but it made me a model employee, and for this I'm grateful.

For many reasons I could not work at Laurens Way under the supervision of Mr. Berry and decided that it would be in my best interest to leave the company with a two week notice.

In February I spoke with Kellie Falk-Tillett about resuming my employment with Drucker & Falk, she suggested that I contact Steve Hayworth. After initial contact with Steve, he stated that nothing was available and he would keep me in mind for future employment. I have been in contact with Steve on numerous occasions and still nothing is available. At this time I request to relocate to Virginia for employment. If I'm not considered for employment please respond with reason at the address below.

Your response is greatly appreciated

Tony E. Johnson
1201 Broken Arrow Court
Box 186
Raleigh, NC 27610
(919) 274-4254

Sincerely,


Tony E. Johnson

D 0022

cc: David C. Falk, Sr.
Kellie Falk-Tillett
Jere Buch
Steve Hayworth



DRUCKER & FALK, LLC
R E A L E S T A T E



7200 Stonehenge Drive, Suite 211, Raleigh, NC 27613-1620 Tel: (919) 846-7300 FAX: (919) 846-9771

June 22, 1999

Mr. Tony E. Johnson
1201 Broken Arrow Court
Box 186
Raleigh, NC 27610

Dear Tony:

The purpose of this letter is to respond to your request for re-employment with Drucker & Falk. After thoughtful deliberation it has been decided that you may not be considered for rehire.

Although your three years of service with the company is appreciated, review of your employee file indicates that you never finished out the full two weeks of your notice. Not only was this action on your part unprofessional, but it put the other employees of Laurens Way in a predicament leaving them short staffed during the busy holiday season.

I trust that this answers any questions you may have had and I wish you luck in your future endeavors.

Sincerely,

DRUCKER & FALK, LLC
Drucker & Falk, Inc., its Manager

Steven Hayworth
Maintenance Coordinator

SH/sy

c: Jere Buch
David C. Falk
Kellie Falk-Tillett

D 0021



DRUCKER & FALK

PAYROLL INFORMATION & RECORD

PROPERTY SITE Quail Ridge DATE COMPLETED 5-21-18

PURPOSE OF REPORT (CHECK ONE BLOCK)

- ☐ PERMANENT TRANSFER BETWEEN SERVICES RENDERED PROPERTIES (COMPLETE 1, 1A, 2, 10)
☐ SET UP NEW EMPLOYEE (COMPLETE ITEMS 1 THROUGH 10)
☐ INFORMATION CHANGE, EXISTING EMPLOYEE (COMPLETE ITEMS 1, 2 AND ITEM TO BE CHANGED)
☒ EMPLOYEE TERMINATION (COMPLETE ITEMS 1, 2 and 11)

1. EMPLOYEE FILE NO. 1850-155 1A. HOME DEPARTMENT 1850

2. EMPLOYEE NAME Ralph Ray

ADDRESS 3645 Castlegate Dr.

CITY Raleigh STATE NC ZIP 27604

3. SOCIAL SECURITY NO. _____ DATE OF BIRTH _____

4. EFFECTIVE DATE OF (EMPLOYMENT, CHANGE, TRANSFER).....

5. SALARY INFORMATION: SALARIED (ENTER AMOUNT PER PERIOD)..... \$ _____

OR
HOURLY, ENTER, HOURLY RATE \$ _____ /HR.

6. TAX INFORMATION: CIRCLE MARRIED (M) OR SINGLE (S)..... M OR S

(W - 4 FORMS MUST
BE ATTACHED)

STATE CODE (ABBREVIATE STATE NAME)

STATE EXEMPTIONS (IF APPLICABLE) # _____

FEDERAL EXEMPTIONS # _____

7. OTHER DEDUCTIONS: DOES EMPLOYEE WANT:

(CIRCLE YES OR NO)

1. HOSPITAL INSURANCE YES NO #1 _____

2. _____ YES NO _____

3. _____ YES NO _____

8. JOB CLASSIFICATION: ☐ FULL - TIME OR ☐ PART - TIME OR ☐ TEMPORARY

9. LIFE INSURANCE CODE: (CIRCLE ONE NUMBER) 1 2 3 4 5 6 7 (FULL TIME POSITIONS ONLY)

10. TRANSFER FROM ANOTHER SITE - NAME OF SITE _____

ACCRUED VACATION BEING TRANSFERRED _____ HRS. ACCRUED SICK LEAVE _____ HRS.

11. EMPLOYEE TERMINATION - LAST DAY WORKED 5/30/98

HOURS OF ACCRUED VACATION PAID ON FINAL PAY _____ HRS.

REASON FOR TERMINATION Gave notice

SIGNATURE OF EMPLOYEE

SIGNATURE OF SUPERVISOR

NOTE: IF THE EMPLOYEE WAS TRANSFERRED FROM ANOTHER SITE, ITEM 11 ABOVE MUST ALSO BE COMPLETED.



THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,)	
Plaintiff,)	
)	
vs.)	AFFIDAVIT OF LAWRENCE BERRY
)	
DRUCKER & FALK, LLC,)	
Defendant.)	

The undersigned, Lawrence Berry, being first duly sworn, deposes and says that:

1. I am a resident of Wake County, North Carolina.
2. Between March 1996 and February 2002, I was a Regional Property Manager employed by Drucker & Falk, Inc. As Regional Property Manager, I had responsibility for the overall operations of multiple apartment communities managed by Drucker & Falk, LLC ("D&F"), including assisting in personnel hiring decisions for the communities.
3. The Maintenance Superintendents (sometimes called Supervisors) at apartment communities managed by D&F are responsible for all upkeep, maintenance and repair work at their apartment community. Part of the Maintenance Superintendent's primary responsibilities are to continually inspect buildings, grounds and common areas to identify needed preventive maintenance and to insure that the buildings and common areas are clean.
4. In or about September 1998, I became the Regional Property Manager for multiple apartment communities managed by D&F, including Laurens Way Apartments ("Laurens Way") in Knightdale, North Carolina. At that time, Tony Johnson was Maintenance Superintendent for Laurens Way. During numerous visits to Laurens Way between September and December 1998, I found (i) the clubhouse bathrooms clogged up, dirty and out of supplies, (ii) the common area washer/dryer area dirty and full of trash, and (iii) the grounds around the property littered with trash. I had to continually counsel Mr. Johnson to correct these items.
5. On October 6, 1998, I, along with Steven Hayworth, then a Regional Maintenance Coordinator for apartment communities managed by D&F, conducted a formal Maintenance

Inspection of the entire Laurens Way property. Formal Maintenance Inspections are unannounced and are completed at least once a year on all D&F-managed apartment communities. During this inspection, Steven Hayworth and I noticed numerous deficiencies in the overall maintenance of the property. Mr. Hayworth and I reported the findings of our inspection on D&F's standard Maintenance Inspection Report (the "Inspection Report"), a true of copy of which is attached to this Affidavit as **Exhibit 2** and incorporated herein by reference. The Inspection Report yielded a score of 76 points out of a possible 95.5 points (or 80%). This score fell under the grading scale entitled "Needs Improvement," which, as shown on the Inspection Report, is the second lowest on a five level grading scale. Mr. Hayworth and I provided Tony Johnson with a copy of the Inspection Report and discussed the contents thereof with Mr. Johnson.

6. A day or so later, I hand delivered a letter to Tony Johnson, a true copy of which is attached to this Affidavit as **Exhibit 1** and incorporated herein by reference. In this letter, I told Tony Johnson that while there was a lot of work to do, everything on the Inspection Report could be rectified, and that I had confidence that there would be improvement in the near future. I also asked Mr. Johnson in this letter to provide, no later than October 30, 1998, (i) a response on how each of the maintenance deficiencies noted on the Inspection Report were corrected, and (ii) a plan for preventing these areas from going below standard in the future. Nevertheless, Tony Johnson never provided a response to the Inspection Report nor did he provide a prevention plan.

7. By letter dated December 7, 1998, a copy of which is attached hereto as **Exhibit 3** and incorporated herein by reference, Tony Johnson gave a two-week resignation notice stating that his last day would be December 21, 1998. Despite his notice, Tony Johnson did not remain on the job at Laurens Way through December 21, 1999. Instead, Tony Johnson walked off the job the week of December 14, 1998, leaving Laurens Way unexpectedly without a maintenance superintendent less than two weeks before Christmas, which is a busy time of year in the maintenance of an apartment community.

8. When a Maintenance Superintendent position becomes available at an apartment

community managed by D&F, generally the on-site resident manager, the Regional Property Manager, and the Regional Maintenance Coordinator will be involved in the search for, assessment of, and hiring of qualified candidates for the position. D&F's policy and preference is to try to fill the position with someone currently working either at that community or another D&F community. In keeping with that policy and preference, I approved the hiring of Eugene Johnson, who is African-American, to replace Tony Johnson as Superintendent at Laurens Way. Eugene Johnson was transferred and promoted from another D&F-managed apartment community, where he had been a maintenance technician. Steven Hayworth had suggested that I approve Eugene Johnson's transfer and promotion to Laurens Way, which I did.

9. In or about June 1999, Steven Hayworth told me that Tony Johnson wanted to be rehired as a Maintenance Superintendent at a D&F-managed apartment community. Mr. Hayworth asked whether I would consider approving the hiring of Mr. Johnson as a Maintenance Superintendent for one of the apartment communities under my management responsibility, should such an opening arise. I told Mr. Hayworth that I would not be willing to hire Mr. Johnson as a Maintenance Superintendent since I did not feel Mr. Johnson had given enough attention to detail when he supervised the maintenance at Laurens Way, Mr. Johnson had never provided a response to the Inspection Report, and Mr. Johnson had failed to honor his two-week notice of resignation in the middle of the Holiday season.

10. Mr. Johnson's race was not a factor in my decision not to consider approving the hiring of Mr. Johnson as a Maintenance Superintendent.

11. I know the matters stated herein of my own knowledge, except as to those matters stated on information and belief and as to those I believe them to be true. In addition, I am over twenty-one, under no disability, and am competent to testify to the matters stated herein.

Lawrence Berry
Lawrence Berry

Sworn to and subscribed before me this

27 day of February, 2003.
Keith A. Satisfy
NOTARY PUBLIC



My Commission Expires: _____

g:\d&f\johnson\aff-lb.doc

Memorandum

To: Tony Johnson
From: Larry & Anne Berry
cc: Marilee Hendricks
Jere Buch
Steve Hayworth
Date: Wednesday, October 7, 1998
Subject: Maintenance Inspection
Laurens Way Apartments

The maintenance inspection performed on October 6, 1998 shows that we have a lot of work to do. There is not anything on the report that can not be rectified, with many items just needing some additional coordination. I realize this was your first inspection, and I have complete confidence that we will see improvement in the near future.

Please review the inspection report, and provide a response on how each of the exceptions were corrected. I would also like you to provide your plan on how we can prevent these areas from going below standard in the future. This report should be provided to me no later than October 30, 1998. Should you need any assistance or have any questions, please feel free to contact Steve Hayworth or myself.

Thank you for your attention to these matters.



DRUCKER & FALK, LLC MAINTENANCE INSPECTION

PROPERTY:

Laurens Way

SUPERINTENDENT:

Tony Johnson

DATE:

INSPECTION #1 10/6/98

INSPECTION #2 _____

INSPECTED BY:

INSPECTION #1 Steve Nayworth & Larry Berry

INSPECTION #2 _____

PURPOSE:

The purpose of the Drucker & Falk, LLC Maintenance Inspection is to provide a positive means of determining the physical condition of a property, as well as to evaluate the adherence to Drucker & Falk, LLC's policies, procedures, and expectations, so that the Drucker & Falk, LLC managed properties can achieve the highest possible standard.

The Maintenance Inspection promotes safety awareness, evaluates compliance with OSHA Guidelines and is a means of establishing future goals for each property.

The Inspection is used as a means of recognizing those that have achieved above satisfactory results.

PROCEDURE:

The Maintenance Inspection is unannounced and is completed at least twice a year by either the Maintenance Director or Assistant Maintenance Director. The Inspection establishes a criteria that is consistent throughout Drucker & Falk, LLC and evaluates the condition of the property "as it is" that day. The reason the inspection is unannounced to the property is that a property should be ready to be seen at all times for a surprise visit from an owner, an owner's representative, inspector, and most importantly, a prospective resident.

The Property Manager may accompany the inspector, but the Manager and Superintendent should accompany the inspector.

Photographs of accomplishments and of areas of concern will be taken in order to illustrate items detailed on the inspection.

[Handwritten signature]

MAINTENANCE INSPECTION REPORT SUMMARY

CATEGORY	MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
		#1	#2	#1	#2
GROUPS/COMMON AREAS	30	23		2	
READY APARTMENTS	35	28 1/2		1	
SWIMMING POOL/JACUZZI	18	13 1/2			
MAINTENANCE MISCELLANEOUS	9	6 1/2			
SAFETY EQUIPMENT & OSHA REQUIREMENTS	8	4 1/2		1 1/2	
TOTAL	100	76		4 1/2	

SCORING:**INSPECTION**

100 POSSIBLE POINTS
 - N/A POINTS
 = MAXIMUM APPLICABLE POINTS FOR THE PROPERTY

#1	#2	AVG.
100	100	200
4 1/2		
95 1/2		

= (MAP)

EARNED POINTS
 MAXIMUM APPLICABLE POINTS FOR THE PROPERTY

76		
95 1/2		
80		

%

GRADING SCALE:

95 - 100 Outstanding
 90 - 94.5 Very Good/Above Average
 85 - 89.5 Satisfactory
 80 - 84.5 Needs Improvement
 70 - 79.5 Needs Immediate Attention

COMMENTS:

Inspection #1

Tony needs to have a regular routine for cleaning and checking readiness and the clubhouse/office restrooms + pool.

Inspection #2

MAINTENANCE INSPECTION REPORT

GROUNDS/COMMON AREAS

		TOTAL POINTS:					
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS		
			#1	#2	#1	#2	
1.	The grounds are free of trash, including behind the buildings, in the dumpster areas, and the parking lots.	2	0				
2.	All automobiles are properly licensed and operable; and if not, are tagged with the proper notification.	1	0				
3.	The storm drains on the property are clear of debris so that runoff can drain properly.	1	1				
4.	The exterior lighting is in good condition.	1	1				
5.	The flags and poles are in good condition.	1/2				1/2	
6.	The signage on the property is well maintained.	1-1/2	1 1/2				
7.	The playground is well maintained with:						
	a. paint in good condition.	1/2	1/2				
	b. the equipment in good and safe condition.	1	1				
	c. no grass growing in the sand areas.	1/2	1/2				
8.	There is no trash (newspapers, children's toys, et cetera) on the roofs.	1-1/2	1 1/2				
9.	There are no tree limbs touching the roofs or eaves.	1-1/2	1 1/2				
10.	The dumpsters are:						
	a. clean.	1/2	1/2				
	b. in good condition.	1/2	1/2				
11.	The dumpster enclosures are in good condition.	1	1				
12.	The fencing on the property is well maintained with:						
	a. no loose posts.	1/2	1/2				
	b. no missing boards or wire.	1/2	1/2				
13.	There are no holes or missing sewer caps on the property that could cause an accident.	1	0				
14.	Exterior of building in good condition.	1	1				
15.	There are no exterior faucets dripping on the property.	1	1				

GROUND/COMMON AREAS - Continued

		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
6.	The gutters are:					
	a. clean.	1/2	1/2			
	b. secure.	1/2	1/2			
7.	The downspouts are in good condition and have splash blocks under them where applicable, & in good condition.	1/2	1/2			
8.	The screens are in good condition.	1	1			
9.	There are no screens laying on the ground on the property.	1	1			
10.	Laundry rooms and machines are clean.	1	0			
11.	The clubhouse is clean.	1	1			
12.	The clubhouse is free of maintenance repairs.	1	1			
13.	The hallways/breezeways are clean.	1	1			
14.	Overall appearance of:					
	a. flowers.	1/2	1/2			
	b. shrubs.	1/2	1/2			
	c. flower beds.	1/2	1/2			
25.	Tennis courts/nets in good condition.	1/2	1/2			
26.	Volley ball courts/nets in good condition.	1/2			1/2	
27.	Weight room in good condition.	1/2			1/2	
28.	Basketball courts/nets in good condition.	1/2			1/2	
29.	Mailbox areas in good condition (lights, trashcans, etc.)	1	1			
TOTAL GROUNDS/COMMON AREAS		30	23		2	

COMMENTS:

Inspection #1 The grounds needs a better daily pick-up, Camaro + Chrysler w/expired tags, holes need to be filled behind the shop and laundry room needs sweeping + trash emptied daily.

GROUND/COMMON AREAS - Continued

Inspection #2

READY APARTMENTS

Apartment address: <u>1020 East Camel, 926</u>		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
1.	The front door to the ready apartment is clean.	1-1/2	1/2			
2.	The identification number/letter is on the front door.	1/2	1/2			
3.	The appliances in the apartment are clean and in working order:					
	a. refrigerator (if the power is off, door must be open)	1/2	0			
	b. range/hood	1/2	1/2			
	c. disposal	1/2	0			
	d. dishwasher	1/2	1/2			
	e. washer/dryer	1/2			1/2	
	f. microwave	1/2			1/2	
4.	The following items are clean:					
	a. cabinets.	1/2	1/2			
	b. countertops	1/2	1/2			
	c. sink	1/2	1/2			
5.	All of the lights in the apartment are working properly.					
	a. kitchen	1/2	1/2			
	b. hallway	1/2	1/2			
	c. bathroom(s)	1/2	1/2			
	d. overhead/ceiling fan	1/2	1/2			
	e. exterior - front and back	1/2	1/2			
6.	Window frames against wall are neatly painted and window sills cleaned.	1/2	1/2			
7.	Storage rooms cleaned.	1/2	1/2			

READY APARTMENTS - Continued

		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
8.	The light globes are clean and free of paint:					
	a. kitchen	1/2	0			
	b. hallway	1/2	0			
	c. bedroom(s)	1/2	1/2			
	d. bathroom(s)	1/2	1/2			
	e. living room/dining room	1/2	1/2			
	f. exterior - front and back	1/2	1/2			
9.	All receptacle and switch plates are clean and free of paint.	1	1			
10.	All door stops are clean and free of paint.	1	1			
11.	All door knobs are clean and free of paint.	1	1			
12.	The bathroom(s) is/are clean:					
	a. sink(s)	1/2	1/2			
	b. medicine cabinet(s)	1/2	1/2			
	c. floor(s)	1/2	1/2			
	d. commode(s)	1/2	0			
	e. tub(s)/shower(s)	1/2	0			
	f. tile	1/2	1/2			
	g. countertops	1/2	0			
	h. vanity/shelves	1/2	1/2			
13.	All floors are clean and in good condition.	1	1			
14.	The walls in the apartment are clean and/or freshly painted.	1	1			
15.	All locking mechanisms and doors in the apartment are working properly:					
	a. front door	1	1			
	b. back door/patio/balcony	1	1			
	c. bathroom(s)	1	0			
	d. windows	1	1			
	e. bedrooms	1	1			
16.	All screens are in good condition.	1	1			
17.	The ready apartment has a fresh, clean smell.	1	1			
18.	Blinds/draperies are in good condition.	1	1			
19.	Blinds/draperies are hung properly.	1	1			

D 0007

READY APARTMENTS - Continued

		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
0.	Water heater is turned off.	2	2			
21.	The filter is clean.	1	0			
22.	The smoke detector is operating properly.	1	1			
TOTAL READY APARTMENTS		35	28 1/2		1	

COMMENTS:

Inspection #1 Two ink pens left on top of frig., disposal has debris left inside, clean traps from right fixtures, commode has loose seat + remove shower curtain, caulk counters in kitchen, tighten bath mob + install a filter.

Inspection #2

SWIMMING POOL/JACUZZI

		TOTAL POINTS: 11-1/2				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
1.	The gate closure is operable.	2	2			
2.	The furniture is in good condition.	1	1			
3.	The pool fencing is in good condition.	1	1			
4.	The proper signage is clearly displayed (including depth markers.	1	1			
5.	The pool is properly vacuumed.	1	1			
6.	There is no evidence of algae in the pool/jacuzzi.	1	1			
7.	The pool/jacuzzi deck is clean.	1/2	1/2			
8.	The trash cans at the pool/jacuzzi are at least emptied daily.	1	0			

SWIMMING POOL/JACUZZI - Continued

		TOTAL POINTS: 11-1/2				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
9.	The pump room is clean.	1/2	1/2			
10.	The pool equipment is put up properly:					
	a. test kit	1/2	1/2			
	b. brushes	1/2	1/2			
	c. vacuum hose	1/2	1/2			
	d. chemicals on shelves or skids/lids on chemicals	1/2	1/2			
	e. safety equipment/shepherds crook, life ring, depth rope.	1/2	1/2			
11.	The record of the pool chemicals is up-to-date with daily chlorine and pH readings and any other required readings.	1	1			
12.	MSDS are on file at the pool.	1	0			
13.	All skimmer baskets are clean, including the sides of the skimmers.	2	0			
14.	The ladies' room is clean and working properly.	1/2	1/2			
15.	The mens' room is clean and working properly.	1/2	0			
16.	Exterior faucets/showers are operating properly.	1/2	1/2			
17.	All ladders and railings are secure and in good condition.	1	1			
TOTAL SWIMMING POOL /JACUZZI		18	13 1/2			

COMMENTS:

Inspection #1 Empty cans + ash trays daily, update MSDS file to include calcium chloride, empty skimmers regularly + install cover on bath light fixture.

Inspection #2

D 0009

MAINTENANCE MISCELLANEOUS

		TOTAL POINTS:			
	MAXI-MUM POINTS	EARNED POINTS		N/A POINTS	
		#1	#2	#1	#2
1. All work orders are signed by the person completing the work.	1/2	1/2			
2. All work orders detail the work completed; and if pertinent, the parts used.	1/2	1/2			
3. The apartment community truck/golf cart is clean.	1	1			
4. Shop is clean and well-organized.	1	1			
5. The maintenance equipment is being properly cared for.	1/2	1/2			
6. The property equipment is etched with the property number.	1-1/2	0			
7. The property equipment is properly stored.	1/2	1/2			
8. Maintenance Personnel:					
a. uniforms are clean.	1/2	1/2			
b. neatly trimmed hair.	1/2	1/2			
c. clean shaven: if sporting a beard, it is trimmed close to the face.	1/2	1/2			
d. I.D badge is being worn properly.	1/2	1/2			
9. Monthly maintenance sheets are completed and turned in on schedule.	1/2	0			
10. Purchase Orders completed by the Maintenance Staff are filled out properly.	1/2	0			
11. Unusable parts and appliances are disposed of on a regular basis; and if not, they are stored safely and properly.	1/2	1/2			
TOTAL MAINTENANCE MISCELLANEOUS	9	6 1/2			

COMMENTS:

Inspection #1 etch all property equipment with property number, three maintenance sheets have been late this year and fill out PO's completely when ordering.

D 0010

MAINTENANCE MISCELLANEOUS - Continued

spection #2

SAFETY EQUIPMENT & OSHA REQUIREMENTS

		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
1.	All hazardous material posters are displayed and filled out completely.	1/2	1/2			
2.	All employee training records are on file.	1/2	1/2			
3.	All ladders on the community are OSHA type I or II.	1/2	1/2			
4.	The community has all protective equipment available for use.	1/2	1/2			
5.	All MSDS for chemicals used by contractors and by the property are:					
	a. on file at the maintenance shop.	1/2	0			
	b. on file for the chemicals in the rental office.	1/2	0			
	c. on file for the chemicals in the model.	1/2	1/2			
	d. on file for chemicals in the clubhouse.	1/2	1/2			
	e. on file for chemicals in the paint room.	1/2			1/2	
6.	A master file of all MSDS are available at the property.	1/2	1/2			
7.	The written hazard communication program is completed and current, on file, and acknowledged by all employees.	1/2	0			
8.	The safety guards are:					
	a. on the grinders.	1/2	1/2			
	b. on the key machines.	1/2	1/2			
	c. on the mowers/weedeaters.	1/2			1/2	

SAFETY EQUIPMENT & OSHA REQUIREMENTS - Continued

		TOTAL POINTS:				
		MAXI- MUM POINTS	EARNED POINTS		N/A POINTS	
			#1	#2	#1	#2
9.	Chemicals not in their original containers are identified with a secondary label.	1/2	0			
10.	O & M Manual upkeep is current.	1/2		1/2		
TOTAL SAFETY EQUIPMENT & OSHA REQUIREMENTS		8	4 1/2		1 1/2	

COMMENTS:

Inspection #1 update MSDS file for venture 5/w liquid for the shop and for hot shot in the office. Also, have all employees sign the Hallcom Program and be sure to use secondary labels.

Inspection #2

FUTURE IMPROVEMENT NEEDS ON THE PROPERTY:

Inspection #1 LANDSCAPING IS IN NEED OF CONSIDERABLE IMPROVEMENT. SEEDING AND AERATING IS TO BE PERFORMED IN THE COMING WEEKS. THERE ARE APPROXIMATELY 20 TREES THAT NEED TO BE REMOVED.

Inspection #2

EQUIPMENT NEEDS ON THE PROPERTY:

Inspection #1

Inspection #2

CONDITION OF THE EXTERIOR OF THE PROPERTY:

(Please note all areas of concern.)

Parking lots, curbing, and sidewalks:

Inspection #1

IN GOOD REPAIR

Inspection #2

Roofs (Include any limbs needing trimming):

Inspection #1

MANY TREES SCHEDULED TO BE REMOVED THAT ARE DEAD OR
LEANING.

Roofs (Include any limbs needing trimming): - Continued

Inspection #2

Wood:

Inspection #1

Good

Inspection #2

Fencing:

Inspection #1

Inspection #2

Gutters and downspouts:

Inspection #1

Good

Gutters and downspouts: - Continued

Inspection #2

Lakes/Ponds:

Inspection #1

N/A

Inspection #2

Boiler rooms:

Inspection #1

N/A

Inspection #2

Drainage concerns:

Inspection #1

SEVERAL AREAS OF REPORTED PONDING OF WATER

Drainage concerns: - Continued

Inspection #2

Condition of exterior paint/siding:

Inspection #1

Good

Inspection #2

Condition of handrails and steps:

Inspection #1

Good

Inspection #2

Condition of pool furniture:

Inspection #1

FURNITURE IS STAINED AFTER ONLY ONE SEASON.

Condition of pool furniture: - Continued

Inspection #2

Condition of mail areas:

Inspection #1

Good

Inspection #2

Foundation/crawl spaces:

Inspection #1

N/A

Inspection #2

Elevator

Inspection #1

N/A

Elevator - Continued

Inspection #2

Lift Stations

Inspection #1

N/A

Inspection #2

Condition of Deck

Inspection #1

Inspection #2

Landscaping/Retaining Walls

Inspection #1

AS STATED IN OPENING COMMENTS.

Landscaping/Retaining Walls - Continued

Inspection #2

Signage

Inspection #1

NEED PAINTING

Inspection #2

Phone/Cable Boxes

Inspection #1

GOOD

Inspection #2

Exterior Lighting

Inspection #1

GOOD

Exterior Lighting - Continued

Inspection #2

Miscellaneous

Inspection #1

Inspection #2

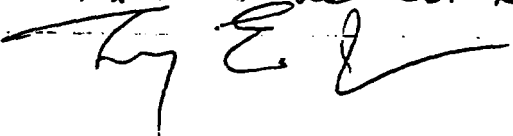
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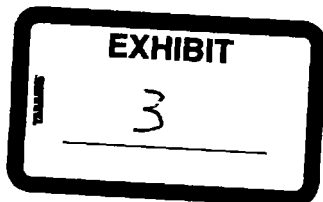
7 DEC. 98

TO: LAURENS WAY APT.

AS OF 7 DEC. 98, I GIVE
MY 2 WEEKS NOTICE. MY LAST
DAY OF EMPLOYMENT FOR
LAURENS WAY WILL BE THE
21ST OF DECEMBER.

I DO APPRECIATE DRUCKER +
FALK GIVING ME THE OPPORTUNITY
TO WORK FOR THIS COMPANY, AND
THE STAFF OF LAURENS WAY. ONCE
AGAIN, THANK YOU FOR YOUR
UNDERSTANDING AND CARING FOR
MY FAMILY.

SINCERLY,
TONY E. JOHNSON
MAINTENANCE SUPERVISOR




THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,
Plaintiff,

Vs.

DRUCKER & FALK, LLC,
Defendant.

AFFIDAVIT OF KELLIE FALK-TILLET

The undersigned, Kellie Falk-Tillett, being first duly sworn, deposes and says that:

1. I am a resident of Wake County, North Carolina.
2. Between July 1996 and May 1999, I was a Regional Property Manager employed by Drucker & Falk, Inc. As Regional Property Manager, I had responsibility for the overall operations of multiple apartment communities managed by Drucker & Falk, LLC ("D&F"). From July 1996 until September 1998, Laurens Way Apartments ("Laurens Way") in Knightdale, North Carolina was one of the apartment communities under my management responsibility. Since May 1999, I have been Vice-President of Drucker & Falk, Inc.
3. On October 10, 1997, I received a letter from Denise Cooke, who was then the on-site community manager of Laurens Way, stating that she would be resigning in two weeks. A true and accurate copy of this letter is attached hereto as **Exhibit 1**.
4. I am one of the custodians of and am familiar with Denise Cooke's employment file. Attached as **Exhibit 2** is true and accurate copy of a Payroll Information & Record for Denise Cooke showing that her last day of work was October 24, 1997. Payroll Information & Records are regularly kept for each employee in the regular course of D&F's business to reflect any changes in an employee's payroll status, and are prepared at or near the time the change takes place. This is consistent with my own personal recollection that Denise Cooke fulfilled her two-week resignation period.
5. As evidenced by the Payroll Information and Record attached hereto as **Exhibit 3**, effective June 1, 1998, Denise Cooke was hired as the on-site community manager of the Pinnacle

Apartments, in Raleigh, North Carolina, which is also managed by D&F.

6. In February 1999, Tony Johnson approached me about coming back to work as a Maintenance Superintendent for an apartment community managed by D&F. I knew Mr. Johnson had formerly worked as the Maintenance Superintendent at Laurens Way; I had actually approved Mr. Johnson's promotion to Laurens Way in 1997. However, when he approached me in February 1999, Mr. Johnson did not describe, nor was I aware of, the circumstances of his departure from Laurens Way. Since I was no longer a Regional Property Manager and had no knowledge of open Superintendent positions, I told Mr. Johnson to contact Steven Hayworth, who was then Regional Maintenance Coordinator for North Carolina apartment communities managed by D&F.

7. In June 1999, I received a copy of a letter from Tony Johnson dated June 17, 1999. I then reviewed Mr. Johnson's employment file for the first time and spoke with Steven Hayworth and Lawrence Berry. I discovered that Mr. Johnson had failed to fulfill his two-week resignation notice period. I then instructed Steven Hayworth to send Mr. Johnson a letter explaining that he would not be considered for rehire as a Maintenance Superintendent because he had failed to finish out the full two weeks of his notice.

8. I know the matters stated herein of my own knowledge, except as to those matters stated on information and belief and as to those I believe them to be true. In addition, I am over twenty-one, under no disability, and am competent to testify to the matters stated herein.

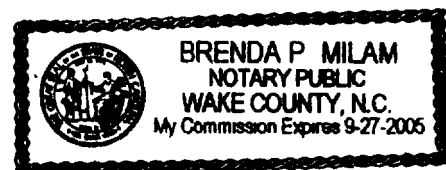
Kellie Falk-Tillett
Kellie Falk-Tillett

Sworn to and subscribed before me this

27th day of February, 2003.
Brenda P. Milam
NOTARY PUBLIC

My Commission Expires: 9/27/05

g:\d&f\johnson\affidavit of KFT.doc





October 10, 1997

Kellie Falk-Tillett
7200 Stonehenge Dr, Ste 211
Raleigh, NC 27613

Dear Kellie,

As of today, October 10, 1997, I am giving my two weeks notice. I have very much enjoyed working for Drucker and Falk. It has been a great opportunity for me and my career, but I feel it is time for me to make a change to better myself.

Thank you for all you have done for me and all the support you have given me.

I wish all the success to Drucker and Falk as they celebrate their 60 Anniversary.

Sincerely,

A handwritten signature in cursive script that reads "Denise Cooke".

Denise Cooke, Mgr.
Laurens Way Apts.



DRUCKER & FALK

PAYROLL INFORMATION & RECORD

PROPERTY SITE Laurens Way

DATE COMPLETED 10/24/97

PURPOSE OF REPORT (CHECK ONE BLOCK)

- ☐ PERMANENT TRANSFER BETWEEN SERVICES RENDERED PROPERTIES (COMPLETE 1, 1A, 2, 10)
☐ SET UP NEW EMPLOYEE (COMPLETE ITEMS 1 THROUGH 10)
☐ INFORMATION CHANGE, EXISTING EMPLOYEE (COMPLETE ITEMS 1, 2 AND ITEM TO BE CHANGED)
☒ EMPLOYEE TERMINATION (COMPLETE ITEMS 1, 2 and 11)

1. EMPLOYEE FILE NO. 190031 1A. HOME DEPARTMENT 11030

2. EMPLOYEE NAME Denise Cooke

ADDRESS 120 Serotina Lane

CITY Highgate STATE NC ZIP 27545

3. SOCIAL SECURITY NO. _____ DATE OF BIRTH _____

4. EFFECTIVE DATE OF (EMPLOYMENT, CHANGE, TRANSFER) _____

5. SALARY INFORMATION: SALARIED (ENTER AMOUNT PER PERIOD) _____ \$ _____

OR
HOURLY, ENTER, HOURLY RATE _____ \$ _____ HR

6. TAX INFORMATION: CIRCLE MARRIED (M) OR SINGLE (S) _____ M OR S _____

(W - 4 FORMS MUST
BE ATTACHED)

STATE CODE (ABBREVIATE STATE NAME) _____

STATE EXEMPTIONS (IF APPLICABLE) _____ # _____

FEDERAL EXEMPTIONS _____ # _____

7. OTHER DEDUCTIONS: DOES EMPLOYEE WANT:

(CIRCLE YES OR NO)

1. HOSPITAL INSURANCE _____ YES NO #1 _____

2. _____ YES NO _____

3. _____ YES NO _____

8. JOB CLASSIFICATION: ☐ FULL - TIME OR ☐ PART - TIME OR ☐ TEMPORARY

9. LIFE INSURANCE CODE: (CIRCLE ONE NUMBER) 1 2 3 4 5 6 7 (FULL TIME POSITIONS ONLY)

10. TRANSFER FROM ANOTHER SITE - NAME OF SITE _____

ACCRUED VACATION BEING TRANSFERRED _____ HRS. ACCRUED SICK LEAVE _____ HRS.

11. EMPLOYEE TERMINATION - LAST DAY WORKED 10/24/97

HOURS OF ACCRUED VACATION PAID ON FINAL PAY 45 HRS.

REASON FOR TERMINATION quit

SIGNATURE OF EMPLOYEE

SIGNATURE OF SUPERVISOR Carlton Giles

NOTE: IF THE EMPLOYEE WAS TRANSFERRED FROM ANOTHER SITE, ITEM 11 ABOVE MUST ALSO BE COMPLETED

FORM NO. 6 11/93 SM

OFFICE FILE

EXHIBIT

2



DRUCKER & FALK

PAYROLL INFORMATION & RECORD

PROPERTY SITE

Pinnacle Apts

DATE COMPLETED

6-10-98

PURPOSE OF REPORT (CHECK ONE BLOCK)

- ☐ PERMANENT TRANSFER BETWEEN SERVICES RENDERED PROPERTIES (COMPLETE 1, 1A, 2, 10)
☒ SET UP NEW EMPLOYEE (COMPLETE ITEMS 1 THROUGH 10)
☐ INFORMATION CHANGE, EXISTING EMPLOYEE (COMPLETE ITEMS 1, 2 AND ITEM TO BE CHANGED)
☐ EMPLOYEE TERMINATION (COMPLETE ITEMS 1, 2 AND 11)

1. EMPLOYEE FILE NO. 179319 1A. HOME DEPARTMENT 100050
2. EMPLOYEE NAME S. Denise Cooke
ADDRESS 6011-523 Paces Arbor Circle
CITY Raleigh STATE NC ZIP 27609
3. SOCIAL SECURITY NO. 231 76-5250 DATE OF BIRTH 8-18-61
4. EFFECTIVE DATE OF (EMPLOYMENT, CHANGE, TRANSFER)..... 6-1-98
5. SALARY INFORMATION: SALARIED (ENTER AMOUNT PER PERIOD)..... \$ 942.30
OR
HOURLY, ENTER, HOURLY RATE \$ /HR.
6. TAX INFORMATION: CIRCLE MARRIED (M) OR SINGLE (S)..... M OR S
(W - 4 FORMS MUST BE ATTACHED) STATE CODE (ABBREVIATE STATE NAME)..... NC
STATE EXEMPTIONS (IF APPLICABLE) # /
FEDERAL EXEMPTIONS..... # /
7. OTHER DEDUCTIONS: DOES EMPLOYEE WANT:
(CIRCLE YES OR NO)
- | | | | | |
|----------------------------|------------|----|----|-------|
| 1. HOSPITAL INSURANCE..... | <u>YES</u> | NO | #1 | _____ |
| 2. _____ | YES | NO | | _____ |
| 3. _____ | YES | NO | | _____ |
8. JOB CLASSIFICATION: ☒ FULL - TIME OR ☐ PART - TIME OR ☐ TEMPORARY
9. LIFE INSURANCE CODE: (CIRCLE ONE NUMBER) 1 2 3 4 5 6 7 (FULL TIME POSITIONS ONLY)
10. TRANSFER FROM ANOTHER SITE - NAME OF SITE _____
ACCRUED VACATION BEING TRANSFERRED _____ HRS. ACCRUED SICK LEAVE _____ HRS.
11. EMPLOYEE TERMINATION - LAST DAY WORKED _____
HOURS OF ACCRUED VACATION PAID ON FINAL PAY _____ HRS.
REASON FOR TERMINATION _____

SIGNATURE OF EMPLOYEE

Denise Cooke

SIGNATURE OF SUPERVISOR

Ann North

NOTE: IF THE EMPLOYEE WAS TRANSFERRED FROM ANOTHER SITE, ITEM 11 ABOVE MUST ALSO BE COMPLETED

EXHIBIT

3

FORM NO. 6 11/93 5M

OFFICE FILE

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,
Plaintiff,

Vs.

DRUCKER & FALK, LLC,
Defendant.

AFFIDAVIT OF HOWARD WADDILL

The undersigned, Howard Waddill, being first duly sworn, deposes and says that:

1. Between April 1989 and September 2000, I was Maintenance Superintendent at Stonehenge Apartments in Raleigh, North Carolina, which is an apartment community managed by Drucker & Falk, LLC. Since September 2000, I have been a Regional Maintenance Supervisor for Drucker & Falk.

2. Michael Hudda formerly worked as a maintenance assistant at Stonehenge Apartments. I was Mr. Hudda's supervisor at Stonehenge Apartments and am familiar with his employment record. In the Spring of 1998, Mr. Hudda gave two weeks notice that he was resigning from Stonehenge and moving back to his home State of New York. Mr. Hudda was an excellent employee, he fulfilled his two-week notice period, and he left on good terms.

3. Lee Anthony (Tony) Baine was hired as a maintenance assistant at Stonehenge Apartments in August 1997, while I was the Maintenance Superintendent. I participated in the decision to hire him.

4. I know the matters stated herein of my own knowledge, except as to those matters stated on information and belief and as to those I believe them to be true. In addition, I am over twenty-one, under no disability, and am competent to testify to the matters stated herein.

Howard Waddill

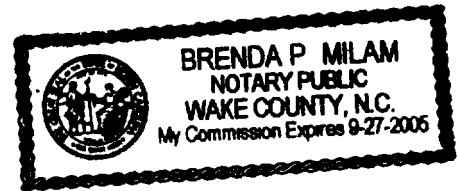
Howard Waddill

Sworn to and subscribed before me this

24th day of February, 2003.

Brenda P Milam
NOTARY PUBLIC

My Commission Expires: 9/27/05



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THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:02-CV-227-BR(3)

TONY JOHNSON,
Plaintiff,

Vs.

DRUCKER & FALK, LLC,
Defendant.

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AFFIDAVIT OF GERALD WELCH

The undersigned, Gerald Welch, being first duly sworn, deposes and says that:

1. Between 1982 and 1987, I was Maintenance Superintendent at Hunting Ridge Apartments in Raleigh, North Carolina, which is an apartment community managed by Drucker & Falk, LLC. I am currently the Maintenance Superintendent at Meredith Village Apartments located in Raleigh, North Carolina and which are also managed by Drucker & Falk, LLC.

2. Lee Anthony (Tony) Baine formerly worked as a maintenance technician at Hunting Ridge Apartments during 1986 and 1987. I participated in the decision to hire Mr. Baine, and was his supervisor at Hunting Ridge Apartments the entire time that he was employed at that apartment community. In 1987, Mr. Baine gave Hunting Ridge Apartments two weeks notice that he was resigning. Mr. Baine was a good employee, he fulfilled his two-week notice period, and he left on good terms. The reason I remember the circumstances of his resignation is that he told me he was engaged to a woman whose father owned a well-known car wash in Raleigh, and he planned to go work for his new father-in-law. I continued to keep in touch with Mr. Baine for several years after he left Hunting Ridge Apartments.

3. I know the matters stated herein of my own knowledge, except as to those matters stated on information and belief and as to those I believe them to be true. In addition, I am over twenty-one, under no disability, and am competent to testify to the matters stated herein.

Gerald Welch
Gerald Welch

Sworn to and subscribed before me this

27th day of February, 2003.

Brenda P. Milam

NOTARY PUBLIC

My Commission Expires: 9/27/05



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1 Q: And is that when you started working for
2 Drucker & Falk?

3 A: Not immediately. My first day of employment
4 was August 7th, 1995.

5 Q: Okay. Did you -- did you do any work
6 between July of 1995 and August of 1995 in
7 Raleigh?

8 A: I searched.

9 Q: You were searching for employment?

10 A: I was searching for employment.

11 Q: And so in August of 1995 you began working
12 where, at -- at Stonehenge Apartments?

13 A: Yes, it was.

14 Q: How did you find out about a position at
15 Stonehenge Apartments?

16 A: Newspaper.

17 Q: The position was advertised in the newspaper?

18 A: Yes, sir.

19 Q: What was the position that was advertised?

20 A: I think it was just maintenance position is
21 how they put it.

22 Q: Was it a maintenance technician position?

23 A: I'm not sure of that.

24 Q: You were hired as a maintenance technician at

1 Q: You allege in your Complaint that your
2 relationship with Drucker & Falk began to
3 deteriorate after Larry Berry took over as
4 the regional property manager at Lauren's
5 Way, is that right?

6 A: Yes, sir.

7 Q: Could you explain how your relationship with
8 Drucker & Falk deteriorated?

9 A: Well, by him coming up to the -- coming to
10 the property, there were certain things that
11 were going -- he would make comments and
12 verbal issues about the property; for
13 instance, just trash pickup, better
14 appearance of the bathrooms and stuff like
15 that as a -- there was times and gaps at
16 that community where I was by myself and
17 things were a little difficult, and I
18 probably couldn't handle 280 units by myself.
19 So some of the issues that was brought up I
20 thought weren't -- were unfair.

21 Q: Mr. Berry took over as regional manager in
22 September of 1998, is that right?

23 A: That's correct.

24 Q: And at the time that he took over as

1 regional manager for Lauren's Way, Fred Stone
2 was still working as a technician there, is
3 that right?

4 A: That's correct.

5 Q: In -- in September of 1998 how many times a
6 week, on average, did Larry Berry visit
7 Lauren's Way?

8 A: It seemed to me that he was there often. I
9 know that he had some appointments on
10 Tuesdays at the community.

11 Q: And was -- was Mr. Berry at Lauren's Way
12 every day?

13 A: I don't believe he was there every day.

14 Q: Was he there at least once a week?

15 A: Yes, sir.

16 Q: At least twice a week?

17 A: Like I said, he -- he was there -- to me, it
18 seemed like he was there quite a few days a
19 week.

20 Q: And you said that Mr. Berry made comments
21 about the apartment. How -- how often in
22 September did Mr. Berry make comments about
23 the upkeep of the property?

24 A: The times he were there, he would make

1 comments about the bathroom not being clean
2 and --

3 Q: Which bathroom?

4 A: The clubhouse bathroom. There was a time
5 where he asked me to come in and take care
6 of the bathroom because it was clogged up
7 one -- one afternoon. And being -- being
8 the maintenance supervisor, there's other
9 things that I could be doing with the
10 apartment community and overseeing.

11 Q: Isn't cleanliness and upkeep part of the
12 responsibilities of the maintenance
13 supervisor?

14 A: Yes, it is.

15 Q: So why was it improper for Mr. Berry to
16 mention to you if the bathrooms were not
17 clean?

18 A: At 2:00 in the afternoon, as I said, or 3:00
19 in the afternoon, when I'm involved with
20 other things at the community, whether it's
21 involved with vendors or whatnot, to pull me
22 from something as important as trying to
23 make sure the community and structure of the
24 property is -- is fine, a toilet issue I

1 think is totally unfair.

2 Q: Well, did -- did Mr. Berry also mention --
3 did Mr. Berry have any discussions with Fred
4 Stone during any of the -- his -- during any
5 of Mr. Berry's visits to the property?

6 A: I'm sure they talked, yes.

7 Q: Well, how -- how many times in -- are you
8 saying that every time Mr. Berry visited the
9 property he would mention something about the
10 upkeep of the property to you?

11 A: Yes, sir.

12 Q: So he would mention that the bathrooms were
13 not clean. Is that -- is that one of the
14 comments that he made to you?

15 A: Yeah. He -- because, you know, he would
16 come to the clubhouse. That would be one of
17 the first places he would visit at the
18 community.

19 Q: The clubhouse is -- the clubhouse houses the
20 management office -- does the clubhouse house
21 the management office?

22 A: Yes, it does.

23 Q: What else is contained within the clubhouse at
24 Lauren's Way?

1 A: The washer/dryer area.

2 Q: Are there any recreation areas for the
3 residents there also?

4 A: No, just the pool outside.

5 Q: The pool outside of the clubhouse?

6 A: Right.

7 Q: So inside the clubhouse is the management
8 office and the washer and dryer area?

9 A: That's correct.

10 Q: Is that all?

11 A: And the clubhouse itself --

12 Q: The clubhouse itself?

13 A: -- which has furniture where you could soit
14 down and a kitchen.

15 Q: It's like a community area for the residents?

16 A: The only thing about that is they weren't
17 allowed to have parties and stuff, but to
18 socialize.

19 Q: But the residents were allowed to socialize
20 in the clubhouse?

21 A: Whenever there was a function, yes, sir.

22 Q: Which bathrooms in the clubhouse did Mr.
23 Berry mention to you were not clean?

24 A: The men's room.

1 Q: How many bathrooms were in the clubhouse? I
2 mean, how many -- yeah. How many bathrooms
3 were in the clubhouse?

4 A: Two, ladies' and men's room.

5 Q: One men's room and one ladies' room?

6 A: Yes.

7 Q: So there was only one men's room and -- one
8 men's room in the whole clubhouse building?

9 A: Yes, sir.

10 Q: And one ladies' room in the whole clubhouse
11 building?

12 A: Right.

13 Q: What did you say to Mr. Berry after he told
14 you that the bathrooms were not clean?

15 A: I went in and took care of it.

16 Q: Did -- did Mr. Berry mention any other
17 upkeep problems with the community when he
18 -- when he would visit?

19 A: The washer/dryer area.

20 Q: What did he say about the washer and dryer
21 area?

22 A: The cleanliness of it. The washer/dryer
23 area is used 24 hours a day. What we do
24 when we start our day is we take care of the

1 whole clubhouse area, the washer/dryer area
2 and the -- and the grounds area.

3 What happens after we are done with
4 that -- like I said, it's used 24 hours a
5 day; and if you come and you inspect at 2:00
6 or 3:00 in the afternoon and expect those
7 items to be 100 percent done, to me, that --
8 that doesn't seem to -- that it's going to
9 be that way except for to say that, "Well,
10 this is wrong, why don't you go ahead and
11 take care of it," and that's what I do.

12 Q: Is Lauren's Way a nice property?

13 A: To me, it was.

14 Q: Is it -- would it be considered more of an
15 upscale property than some of the other
16 Drucker & Falk managed communities?

17 A: I wouldn't say it was a Class A community.

18 Q: How many units were available for residents
19 at the time that Mr. Berry took over? Did
20 you mention 280?

21 A: I'm sorry. It was actually 240.

22 Q: Two hundred and forty units?

23 A: I'll make a correction on that, 240.

24 Q: So your normal procedure was to clean the

1 clubhouse at the beginning of each day, is
2 that correct?

3 A: Yes, between me and the assistant our job was
4 to make sure that the clubhouse, the trash
5 and everything was emptied and the grounds
6 was picked up, meaning pick up trash.

7 Q: And did you have a routine for recleaning the
8 clubhouse during the -- at some point during
9 the day?

10 A: No.

11 Q: So -- so your management plan was just to
12 clean the clubhouse in the mornings?

13 A: That's what we did on -- on a daily basis.

14 Q: But when Mr. Berry would come to the
15 clubhouse in the afternoon and notice that
16 the washer and dryer area and the bathroom
17 area were not clean, he would then have y'all
18 tidy up those areas during the afternoon?

19 A: That's correct, whether it was myself or --
20 or Fred Stone. It could have been myself
21 because Fred might have been turning
22 apartments. Could have been Fred because I
23 was involved with some vendors or whatnot.

24 Q: What would Mr. Berry complain about the

1 washer and dryer area?

2 A: Trash, you know; lint, you know. Specifics
3 were that it was dirty.

4 Q: Just the washers and dryers themselves were
5 dirty or the area around the washer and
6 dryer were dirty?

7 A: The -- the washer/dryer area.

8 Q: The whole area was dirty?

9 A: Yes, sir.

10 Q: Did you agree that they were dirty?

11 A: I don't think there was an agreement. I
12 think I went to take care of the matter.

13 Q: What would you do to clean up the washer and
14 dryer area?

15 A: Well, there could have been different things
16 wrong at the time. Whatever was wrong at
17 the time, that's what I took care of.

18 Q: What were some of the things that Mr. Berry
19 noticed that he considered to be wrong with
20 the washer and dryer area?

21 A: Well, what I did is wipe down the dryers and
22 swept the floor from lint. Like I said, it
23 could have been different things: trash
24 filled up -- well, the containers, empty

1 containers, detergents; stuff like that.

2 Q: How about the bathrooms in the clubhouse,
3 what would Mr. Berry find wrong with the
4 bathroom?

5 A: I remember a situation -- a specific
6 situation that he called me in because a
7 toilet was clogged.

8 Q: The men's toilet was clogged?

9 A: Yes.

10 Q: Had it been overflowing?

11 A: It wasn't overflowing.

12 Q: It was just clogged?

13 A: Yes.

14 Q: Did he ever mention any -- mention trash
15 being in the bathroom?

16 A: Not that I remember.

17 Q: Did he mention that the bathrooms were
18 dirty? I believe you mentioned that he
19 complained about the bathrooms being dirty.

20 A: There was different things wrong at any
21 given time. I -- specific things, I can't
22 remember.

23 Q: But when he would mention them to you, you
24 would -- you would clean -- you would take

1 care of the issues?

2 A: Yes. Like I said, I remember the one issue
3 of going -- he called me in to flush the
4 toilet because it was full up. It was
5 clogged.

6 Q: What was your procedure for stocking the
7 clubhouse -- stocking supplies in the
8 clubhouse?

9 A: I'd order as needed, fill out a purchase
10 order form and order from a supply company.

11 Q: Didn't Mr. Berry mention to you at times
12 that certain supplies were out of stock in
13 the clubhouse?

14 A: Yes, he did.

15 Q: Do you recall when he -- when he mentioned
16 this to you?

17 A: Well, my opinion is we were always stocked.

18 Q: And when did he mention to you that you were
19 out of stock? On which occasions did he
20 mention to you that supplies were out of
21 stock?

22 A: I -- I remember him saying those things. It
23 was during that time that he was there at
24 the site. Specific days or times I can't --

1 can't say.

2 Q: What did he mention to you was out of stock?

3 A: I don't remember that either. It was just
4 supplies, meaning, to me, that's a general
5 statement to say supplies.

6 Q: What else did Mr. Berry mention to you with
7 regard to the upkeep of the property other
8 than the bathrooms and washer and dryer area
9 of the clubhouse?

10 A: Ultimately, based on his observations, he
11 suggested that Steve Hayworth would come out
12 and do a annual inspection.

13 Q: No, but I'm talking about specifics. Other
14 than the bathrooms in the clubhouse and the
15 washer and dryer area of the clubhouse, what
16 other specific areas of the property did Mr.
17 Berry mention to you was in need of better
18 upkeep?

19 A: I think -- I think I mentioned the grounds
20 as well.

21 Q: The grounds around the property?

22 A: Right.

23 Q: What did -- what did Mr. Berry mention about
24 the grounds?

1 A: Trash. I mean, you're going to have little
2 papers blow around the community; and, you
3 know, we make a clean sweep through the
4 community in the mornings. And when he
5 shows up, you see trash, you see paper; you
6 assume the overall community is -- is full of
7 trash.

8 Q: So Mr. Berry at times would come onto the
9 community and see trash on the grounds of
10 the community?

11 A: Yes, sir.

12 Q: And what -- what would he say -- what would
13 he say to you when he would see trash on the
14 grounds? I mean, did he just tell you to
15 pick up -- or take care of picking up the
16 trash?

17 MR. HUTSON: Objection.

18 A: Pretty much.

19 Q: You -- you can -- well, what did Mr. Berry
20 say to you with regard -- when he would
21 notice trash on the grounds?

22 A: Trash on the grounds. I mean, specific
23 wording, other than the fact that he noticed
24 trash on the grounds.

1 Q: Did you have any kind of procedure to check
2 the condition of the grounds during the day?
3 A: Yes. It's -- it's everybody's duty to pick
4 up trash as they see it.
5 Q: Was trash on the grounds the only areas that
6 Mr. Berry mentioned with regard to the
7 grounds?
8 A: Yes.
9 Q: Did Mr. Berry make these observations to you
10 throughout the time that you -- throughout
11 the time that you were working at Lauren's
12 Way and he was the regional manager at
13 Lauren's Way?
14 A: Yes, sir.
15 Q: Did anybody other than Mr. Berry make any
16 comments to you about the condition of the
17 property at Lauren's Way?
18 A: Never had a problem.
19 Q: But my question, did anybody other than
20 Larry Berry mention to you -- mention
21 anything about the upkeep of the property to
22 you?
23 A: No.
24 Q: Did Steve Hayworth ever mention anything to

1 this. I want to -- let me -- I want to go
2 over with you your employment following your
3 working at Lauren's Way Apartments.

4 You worked at Laurel Springs Apartment
5 from December 21st of 1998 to June the 1st
6 of 1999, is that correct?

7 A: What page is that?

8 Q: Well, I'm just -- do you -- do you recall --
9 do you recall where you work after you worked
10 at Lauren's Way?

11 A: Yes. I went to work at Laurel Springs
12 Apartments.

13 Q: Where is Laurel Springs Apartments?

14 A: It's in Raleigh.

15 Q: Who manages Laurel Springs Apartments?

16 A: At the time, it was Post Properties.

17 Q: Post Properties?

18 A: Yes.

19 Q: And did you start working at Laurel Springs
20 Apartments on December 21st, 1998?

21 A: Yes, I did.

22 Q: And you worked at Laurel Springs Apartments
23 until June 1st of 1999, is that right?

24 A: That's correct.

1 apartments were viewed during the inspection?

2 A: Right, within those buildings.

3 Q: And then you were evaluated or -- or you were

4 evaluated based on the condition of these

5 ready apartments?

6 A: Yes.

7 Q: And if you look to page D8 -- Bates stamped

8 page D8, looks like you earned 28 and a half

9 points out of a possible 35, is that correct?

10 A: Yes, that's correct.

11 Q: Do you disagree with the ranking that you

12 received for these ready apartments?

13 A: Yes, I do.

14 Q: What part do you disagree with?

15 A: I agree [sic] with the overall rating. I

16 think the rating should have been higher --

17 should have been higher than 28 and a half.

18 Q: You felt the -- well, let's see. If you

19 look above the score, you could get one

20 point for the filter being clean. Are you

21 denying that the filter was dirty?

22 A: No, I'm not.

23 Q: So you agree that the filter was unclean in

24 that instance?

1 A: Yes.

2 Q: All right. If you look above, on D7, it
3 says on number 15, "All locking mechanisms
4 and doors in the apartment are working
5 properly," and (c) says "bathroom," and there
6 was zero points given for a possible one.

7 Do you disagree with that score or do
8 you agree that you did not deserve a one
9 point for the bathroom locking mechanism
10 being -- working properly?

11 A: To be honest with you, I really don't know
12 how to answer that question because it's not
13 even giving an apartment number. It's just
14 giving building numbers and not necessarily
15 the apartment we actually went in. So I
16 can't determine that that's actually what was
17 wrong.

18 Q: Well, why don't you just go through the --
19 the ready apartment section of this
20 inspection report and tell me in which
21 instance where you received zero points that
22 you thought was unjustified.

23 A: Number three.

24 Q: Which number three? Which part on --

1 A: I'm sorry, I should be -- I'm on D6.
2 Q: Okay.
3 A: I got zero points for the refrigerator.
4 Q: And you're claiming that the refrigerator --
5 A: The grading --
6 Q: -- was spotless?
7 A: This -- the grading on this is whether or not
8 the refrigerator -- the power was off or the
9 door must be open. As far as cleanliness, I
10 believe the refrigerator was clean.
11 Q: So the door must have --
12 A: So to say --
13 Q: -- the door must have been closed?
14 A: The door was probably closed. All the -- all
15 the appliance doors are closed.
16 Q: How about (c), the disposal?
17 A: Disposal may have had some debris in it from
18 -- from construction.
19 Q: All right. How about on -- how about on the
20 next page, D7, number (a) at the top?
21 A: Globes free of paint and kitchen globe could
22 have had some paint on it. Okay.
23 Q: How about in the hallway?
24 A: Hallway, yes.

1 Q: Yes what?

2 A: Yes, it could have had some paint on it.

3 Q: How about in number 12?

4 A: Looks like commode zero and tub zero. Maybe

5 I would disagree with the commode and -- I

6 mean, agree with the commode and not

7 necessarily the tub. I don't know what was

8 wrong -- what they're saying was wrong there.

9 Q: What about the countertops? This is 12(g) in

10 Bates stamp D7.

11 A: There's nothing saying what's wrong there.

12 Q: Is it possible that the countertops just

13 weren't clean?

14 A: It's not -- to me, it's not possible.

15 Q: Why isn't it possible?

16 A: Because the apartment was ready for move-in.

17 All the bathrooms, it doesn't say anything

18 that was wrong there.

19 Q: Well, it says the locking mechanisms and

20 doors are working properly. And as far as

21 the bathroom goes, you received zero points.

22 Doesn't that mean that the -- the locking

23 mechanisms on the bathroom door were not

24 working properly at the time?

1 A: I really can't determine that --

2 Q: You mean --

3 A: -- because it doesn't specifically say it.

4 Q: Do you remember one way or the other?

5 A: No, I don't.

6 Q: All right. What about the comments on page

7 D8? Can you read those comments?

8 A: Two pens on top of the refrigerator.

9 Disposal debris left inside. Clean bugs from

10 light fixture. Commode has loose seat and

11 remove shower curtain. Caulk counters in

12 the kitchen. Tighten bath -- I'm not sure

13 what that is.

14 Q: Could it be bath knob?

15 A: Tighten bath knob and install a filter.

16 Q: Aren't those comments correct?

17 A: (No Response)

18 Q: Were there two ink pens left on top of the

19 refrigerator?

20 A: Oh, I wouldn't -- I don't know that.

21 Q: You don't know? You testified earlier that

22 there were two pens on top of the

23 refrigerator.

24 A: I said that's what he said, that there was

1 two ink pens on top of the refrigerator.

2 Q: So -- so your -- your claim is that there

3 were not?

4 A: (No Response)

5 Q: Are you claiming there were -- that there

6 were not two ink pens left on top of a

7 refrigerator and that was just made up?

8 A: No, I'm not saying that. I'm saying I

9 didn't see the two pens on top of the

10 refrigerator, but he did. I'm not even tall

11 enough to look up on top of the refrigerator.

12 Q: Well, didn't the disposal have debris left

13 inside of it? .

14 A: Yeah, that's possible.

15 Q: Well, weren't there bugs in the light

16 fixtures?

17 A: That could be possible, too.

18 Q: And didn't the commode have a loose seat?

19 A: That I don't remember.

20 Q: Didn't the kitchen need caulking? Didn't

21 the counters in the kitchen need caulking?

22 A: I can't remember that either.

23 Q: Well, didn't the bath knob need tightening?

24 A: I don't remember that either. But I do --

1 Q: But you do remember that it needed a filter?
2 A: -- remember the filter. Yes.
3 Q: Well, look through the rest of this
4 inspection report, if you will, and tell me
5 if there's anything else you disagree with.
6 A: He gave me a zero --
7 Q: You can -- you can start from the beginning
8 if --
9 A: I'm sorry.
10 Q: Well, I mean, you can start wherever you want
11 to.
12 A: The -- the swimming pool/jacuzzi section, he
13 gave me zero.
14 Q: Where are you looking? What page is this?
15 A: I'm sorry. That's D8.
16 Q: D8, okay. At the bottom of D8?
17 A: Yes. The time of year of October, pretty
18 much you don't have as many swimmers or
19 bathers. I mean, what could he have
20 possibly found at the pool where he says
21 trash, empty trash and there's not really no
22 activity going on. And I don't even
23 remember that to be anyway.
24 Q: You don't remember whether there was any

1 trash in the trash cans at the pool/jacuzzi?

2 A: Not that time of the year.

3 Q: Are you saying that there weren't any --
4 there was not any trash in the pool or you
5 just don't remember?

6 A: Yes. I don't remember it to be trash in the
7 pool at the time of the year because -- just
8 the reason why I say that is you don't have
9 no bathers that time of the year. So I
10 would wonder where the trash would be --
11 would have accumulated up from.

12 Q: Well, had you emptied the trash cans that day?

13 A: That particular day?

14 Q: Yes, that particular day.

15 A: I mean, the only pool maintenance that's
16 required of that year is we do do year-round
17 pool maintenance and making sure that the
18 pool looks good and all that and trash is
19 emptied.

20 On this particular day I can't say I
21 actually emptied the trash. I'm just saying
22 that I don't believe there was that much
23 activity going on at the pool in October.

24 Q: Well, that's not what it says. This thing

1 simply says the trash cans at the
2 pool/jacuzzi are at least emptied daily.

3 I'm asking you, at that time were you
4 emptying the trash cans at the pool and
5 jacuzzi on a daily basis?

6 A: No, I -- I have a schedule where I do my pool
7 maintenance on Monday, Wednesdays and Fridays.

8 Q: Okay.

9 A: So that's when I did that stuff.

10 Q: Is there anything else in this inspection
11 report that you disagree with?

12 A: He gave me a total zero for MSDS file.

13 Q: What is MSDS?

14 A: It's material safety data sheets. We're
15 required to make sure that for any products
16 that you have that contains cautions,
17 warnings, you must have a sheet for that.

18 Well, to give me a zero, that means to
19 say I didn't have any and which I had a log
20 established. And there were some products
21 where I did not have MSDS sheets for. I
22 realize that.

23 Q: You're looking at number 12 on Bates stamped
24 page D9?

1 A: Yes.

2 Q: So that there were some MSDS that were not
3 -- that were not on file at the pool, is
4 that correct?

5 A: Yes. I mean, he could have gave me a half a
6 point for that. To just give me a zero is
7 saying I didn't have any.

8 Q: So you're claiming you had some MSDS on file
9 at the pool?

10 A: I know I did.

11 Q: But --

12 A: I had a -- I had a log.

13 Q: But not all of the ones you were supposed to
14 have?

15 A: Right.

16 Q: Well, how about number 13, all skimmer
17 baskets are clean, including the sides of
18 the skimmers?

19 A: I just talked about that. I do pool
20 maintenance on Monday, Wednesdays and
21 Fridays. I don't know what day this was.

22 Q: But on the day that this inspection took
23 place, the skimmer baskets were unclear, is
24 that correct?

1 A: They may have had some debris in them. They
2 get debris in them. They weren't full to the
3 top where I let -- let it go by without
4 doing it. I'm not saying there wasn't a
5 leaf here or there in the -- in the baskets.
6 Q: Well, what about number 15, the men's room?
7 A: I'm sorry, sir. He gave me a zero out of a
8 possible two.
9 Q: On what, on number 13?
10 A: Skimmers.
11 Q: Yeah. Well, you just admitted the skimmer
12 baskets weren't clean --
13 A: Yes.
14 Q: -- didn't you?
15 A: Yes, I did.
16 Q: What about number 15?
17 A: And we already went over that.
18 Q: So you agree that the men's room was not
19 clean and working properly?
20 A: No, I -- no, I disagree with that.
21 Q: You disagree?
22 A: Yes.
23 Q: You claim that the men's room was perfectly
24 clean and working properly at the time?

1 when I first started in the company, but I
2 -- I recognize what this is.

3 Q: What is that?

4 A: That's the duties and responsibilities of the
5 superintendent.

6 Q: Are there any duties and responsibilities
7 listed on Exhibit No. 6 that you don't recall
8 being part of the duties listed when you
9 worked at Lauren's Way? Did that question
10 make any sense?

11 A: Yes, I understand.

12 **MR. HUTSON:** And I'm going to
13 voice an objection to this document at
14 all. It's dated 10/4/2002. I don't
15 even see it's relevant.

16 **MR. SATISKY:** That's fine.

17 Q: (By Mr. Satisky) You can still answer.

18 A: I'm sorry. Could you repeat that question?

19 Q: Well, let me ask it further -- in a
20 different way. Do you see number seven --
21 number seven on this Exhibit No. 6?

22 A: Yes.

23 Q: Would you agree that one of the duties of the
24 maintenance superintendent is to continually

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1 inspect buildings, grounds and common areas
2 to identify new preventive maintenance --
3 maintenance to ensure that the buildings and
4 common areas are clean and that the grounds
5 are being properly maintained and to identify
6 current and potential safety hazards?

7 A: Yes, I agree 100 percent, and I did that on
8 a daily basis.

9 Q: After the maintenance inspection that took
10 place on October 6th of 1998, how often did
11 you and Larry Berry have contact with one
12 another?

13 A: I'd say we had contact, I mean, because
14 there was an incidence where there was a
15 fire in the community and I guess it was --
16 was panic, kind of hectic, kind of way. We
17 were both involved -- involved with that,
18 and somehow or another we were so involved
19 with it that it shows -- my experience
20 actually came out and where I actually
21 handled that situation while he was there.

22 Q: But how often did you and he have any --
23 have contact after -- I guess between
24 October 6th and December of 1998?

1 A: Right.

2 Q: So are you telling me it's just a coincidence
3 that the last day you were supposed to work
4 at Lauren's Way happened to coincide with
5 the first day you were going to -- you
6 started working at Laurel Springs?

7 A: No, that -- that would be correct.

8 Q: What would be correct?

9 A: That my first day of employment was going to
10 start on the 21st.

11 Q: When did you know that your first day of
12 employment at Laurel Springs was going to be
13 on December 21st?

14 A: Yeah, I must have already known that then,
15 now that -- now that I think about it.

16 Q: When did you find out that you were going to
17 be starting work at Laurel Springs on
18 December 21st?

19 A: That -- that was probably during the
20 interview. I had a interview with Susan
21 McNeillich.

22 Q: And when did you have an interview with Susan
23 McNeillich?

24 A: I don't know. It was prior to this notice.

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- 1 Q: How much prior to the notice?
- 2 A: I don't know. Like I said, I was out
3 looking, you know.
- 4 Q: Did you tell anybody at Lauren's Way that you
5 were looking for other employment?
- 6 A: No, I didn't.
- 7 Q: Well, when did you start looking for other
8 employment? Was it the beginning of
9 December, the middle of November, the
10 beginning of November?
- 11 A: I may have already always been looking for
12 other employment.
- 13 Q: You were always looking for other employment
14 when you were working at Lauren's Way?
- 15 A: To better myself, so I can't say that this
16 particular time here is the only time I was
17 looking for employment. I guess that's what
18 I'm saying.
- 19 Q: Did you consider getting a job at Laurel
20 Springs an improvement from your position at
21 Lauren's Way?
- 22 A: Like I said, I was probably already looking,
23 you know.
- 24 Q: Did you consider that to be an improvement

1 over your position at Lauren's Way?

2 A: As far as pay --

3 Q: You were being paid more at Laurel Springs
4 than you were when you left Lauren's Way, is
5 that correct?

6 A: Yes.

7 Q: Why did you give Lauren's Way two weeks'
8 notice of your resignation?

9 A: Based on the -- I think I told you that
10 there was some problems, and that was
11 probably one of the reasons why I decided to
12 go ahead and look for other --

13 Q: And look. But my question is, why did you
14 give two weeks' notice? Why didn't you just
15 walk into the office on December the 7th or
16 whatever and say goodbye? Why did you give
17 two weeks' notice?

18 A: First of all, to give a two weeks' notice is
19 the right thing to do, especially when you
20 want to be hired back into a company.
21 That's what most people do, they give two
22 weeks' notices.

23 Q: Do you consider that two weeks to be the
24 proper thing to do for the company you're

1 leaving?

2 A: Right.

3 Q: But you didn't stay for two weeks, did you,

4 Mr. Johnson?

5 A: No, I didn't.

6 Q: You left at the beginning of the second

7 week, isn't that right, somewhere around

8 December the 15th?

9 A: I left that week, yes.

10 Q: And why did you fail to stay for the two

11 weeks?

12 A: Because Larry Berry counseled me on -- on a

13 rehire situation.

14 Q: You're saying because Mr. Berry told you you

15 were not supposed -- you should not have

16 hired Joe Swan you left the company that day?

17 A: That's correct. He was -- he was an

18 African-American and I didn't -- I didn't

19 think it was right for him to question me on

20 that when he already knew that I checked his

21 references and everything checked out.

22 Q: What did that have to do with your

23 completing your two weeks' notice?

24 A: Well, I thought I was harassed by him

1 Q: Just so -- I'm a little confused. At
2 Lauren's Way, did you have a free apartment
3 or 50 percent off?
4 A: It was a free apartment at Lauren's Way.
5 Q: Lauren's Way was a free apartment?
6 A: Right. So there was some differences there.
7 Q: But, I mean, I'm just -- but I'm just trying
8 to -- I'm just wondering what else you told
9 the manager at Laurel Springs as to why you
10 were looking for another position, other than
11 you were looking for a higher salary, if
12 anything?
13 A: I may have also told her that I wanted to
14 see what it was like to work for another
15 company. I may have said something like
16 that.
17 Q: Anything else you can remember?
18 A: Nothing else specifically right now.
19 Q: Okay. So tell me about your next -- what
20 was your next conversation with a
21 representative of Drucker & Falk after you
22 left Lauren's Way?
23 A: I think I followed up with Kellie Falk-Tillet.
24 Q: You followed up what with Kellie Falk-Tillet?

1 A: An interest of coming back to the company.

2 Q: You contacted Kellie Falk-Tillet?

3 A: Yes.

4 Q: When -- when did you contact Kellie

5 Falk-Tillet?

6 A: It was around February or so of 1999.

7 Q: So two months after you had left Lauren's

8 Way you contacted Kellie?

9 A: Right.

10 Q: And what did you tell Kellie Falk-Tillet?

11 A: Well, I was expressing an interest of coming

12 back to the company; and she basically told

13 me who I needed to contact to do that

14 because she wasn't the one to do that. So

15 she said to -- Steve Hayworth would be the

16 person to contact.

17 Q: Did you talk to Kellie on the phone or in

18 person?

19 A: We met for lunch at -- at Crowley's at

20 Stonehenge Market.

21 Q: And you told Kellie you were interested in

22 coming back to work for the company. Is

23 that all you told her? I mean, did you get

24 into any specifics?

1 A: I talked to her about coming back as a
2 maintenance supervisor. She didn't know
3 whether or not they had --
4 Q: She didn't know what? I'm sorry.
5 A: I talked to her about coming back to the
6 company as a maintenance supervisor. She
7 didn't know if they actually had that. And
8 like I said, she just asked me to get with
9 Steve Hayworth on that.
10 Q: Why did she tell you to get with Steve
11 Hayworth?
12 A: He would be the person to contact coming
13 back into the company to where I was coming
14 back into it. He would -- he would have
15 knowledge and information of any jobs that
16 was available.
17 Q: Of any superintendent jobs, you mean?
18 A: Basically, whether it was maintenance related.
19 Q: Just maintenance related in general?
20 A: Right.
21 Q: So what did you do after your lunch with
22 Kellie Falk-Tillet?
23 A: Went back to -- went back to work at
24 Lauren's Way -- I'm sorry, Laurel Springs.

1 Q: Did you -- why did you want to come back to
2 work at Drucker & Falk?

3 A: I thought by coming back that way I may work
4 somewhere differently, at another community
5 other than where Larry Berry was working at.

6 Q: What was wrong with your job at Laurel
7 Springs?

8 A: Well, me and the manager didn't really see
9 eye to eye on things and -- to include what
10 I'm responsible for as a maintenance
11 supervisor.

12 Q: What kind of things did you disagree about?

13 A: She basically wanted to micromanage the whole
14 situation. There was times when things
15 wasn't getting done because I didn't know
16 about it. Like an apartment, for instance,
17 was moving in before it -- it actually got
18 turned over, meaning prepared for a next
19 move-in.

20 Q: I'm not sure I understand.

21 A: Well, what I'm saying is she wanted to
22 micromanage the whole property and not
23 necessarily let me do what I needed to do to
24 get the job done at the apartment community

1 he told me he didn't have anything available
2 right then but he would keep me in mind for
3 the future.

4 Q: Did y'all talk about what you wanted to do
5 at the company, you and Steve Hayworth?

6 A: I don't think it was a drawn-out
7 conversation other than the fact that I was
8 telling him I wanted to come back to work in
9 maintenance. I mean, I wouldn't say, "Hey,
10 Steve, I want to come back and work as a
11 maintenance supervisor."

12 He understood that I was a maintenance
13 supervisor already. So, naturally, he knew I
14 was talking about coming back to the company
15 to work as a maintenance supervisor.

16 Q: Well, at the time that you talked -- that
17 you called Kellie Falk-Tillet, were you aware
18 of any open superintendent positions?

19 A: Oh, no, I wasn't aware of anything. I just
20 -- all I knew is I just wanted to talk to
21 her about coming back to the company.

22 Q: And what about when you talked to Steve
23 Hayworth the first time, were you aware of
24 any open positions for superintendent?

1 A: No, sir.

2 Q: And Kellie didn't tell you that -- she told
3 you that there were no positions -- no.
4 What did Kellie tell you?

5 A: No. She just asked me to get with Steve
6 Hayworth, that he would be the person to
7 contact.

8 Q: And then Steve told you that he wasn't aware
9 of any open superintendent positions at the
10 time?

11 MR. HUTSON: Objection as to form.

12 A: Right.

13 Q: What did -- what did Steve Hayworth tell you?

14 A: He simply told me that he didn't have
15 anything available right then, that he would
16 keep me in mind in the future.

17 Q: Was that the end of your initial
18 conversation with Steve Hayworth?

19 A: I mean, I knew Steve. We talked. I mean,
20 we might have had other conversations that
21 weren't related to that. Just how are you
22 doing or something like that.

23 Q: Uh-huh (yes). So you didn't fill out any
24 application or anything at that time, did you?

1 A: No.

2 MR. HUTSON: Objection as to
3 form. You can answer.

4 A: They already had a application on me.

5 Q: You mean for the -- when you had filled out
6 one for Stonehenge, you mean?

7 A: Because I didn't -- I don't even remember if
8 I filled out one for Lauren's Way.

9 Q: Okay.

10 A: I figured the initial employment application
11 was what they had.

12 Q: All right. Well, tell -- I mean, what
13 happened after -- what happened after your
14 first conversation with Steve Hayworth? Did
15 you -- did you have another conversation
16 with Mr. Hayworth?

17 A: Yes. I followed up with him on several
18 occasions.

19 Q: When were the dates of these additional
20 conversations with Mr. Hayworth?

21 A: They were continuous from February all the
22 way into June -- February of 1999 to June of
23 1999.

24 Q: Well, how many conversations did you have

1 Q: And -- and so my question is, did that --
2 the incident with the apartment occur prior
3 to February of 1999 or -- did it occur prior
4 to February of 1999?

5 A: Well, what I said was there was a lot of
6 things that happened, and I may have
7 included that prior to. That might have
8 been a mistake or whatever, but --

9 Q: If so, that's fine. I just -- that's why I
10 just want to get --

11 A: Yeah.

12 Q: -- the correct testimony.

13 A: Right. I mean, there was a lot of things
14 happening. I may have just compiled
15 everything right then and there, you know.
16 That -- I could have made a mistake by
17 saying that happened right then and there.

18 In actuality, there was a lot of things
19 that happened from that point all the way up
20 until my last day, and I might have just
21 compiled it with everything else.

22 Q: What were you going to do about a job when
23 you quit on June the 1st?

24 A: Well, I shot myself in the foot on that one.

1 I mean, when I quit, I knew I didn't have a
2 job to go to. That's how bad it was. I've
3 never put myself in a situation like that
4 before.

5 Q: So you quit Laurel Springs on June 1st
6 knowing you didn't have another job
7 opportunity?

8 A: Yes.

9 Q: Okay. So then a couple of months went by,
10 and then you started working at The Palms
11 Apartments in August of 1999, is that correct?

12 A: That's correct.

13 Q: When you received the letter from Steve
14 Hayworth, which is Exhibit No. -- what is
15 that -- 10 --

16 A: No. 10.

17 Q: -- what did you do after you received that
18 letter?

19 A: Well, I was -- I was devastated. When I got
20 the letter from my mom's mailbox -- me and
21 my wife got it. We was out riding. We read
22 it together and we was, like, wow, you know.
23 I don't have a job. I get a letter like
24 this back, and I was just devastated by it.

1 not?

2 A: No, I don't.

3 Q: And when did you -- and when did you find
4 out the reasons that -- or the supposed
5 reasons that Ralph Ray had quit Hunting Ridge?

6 A: I found out sometime during that summer.
7 Like I said, I had conversation with
8 somebody. People -- people talk within the
9 company. I talked to so many different
10 people. I can't possibly remember everybody,
11 every conversation I talked to somebody about
12 somebody else.

13 Q: And so then when you were working at -- a
14 year later, when you were working at
15 Edinborough Commons, you're saying a supplier
16 came in on the property and y'all started
17 talking about Ralph Ray?

18 A: Yes. I mean, he volunteered the information
19 to me. I didn't ask.

20 Q: Who was the supplier?

21 A: I can't even remember right now. It could
22 have been -- I want to say it was Mack from
23 -- I think it was actually Ross Aull, Alt,
24 something. I can't remember his last name.

1 something about Chris Seagrove leaving the
2 company?

3 A: He left the company when he worked for The
4 Groves Apartments. He told me that he
5 couldn't handle that apartment community and
6 he -- he quit.

7 Q: When was -- when was Seagrove working for
8 The Groves?

9 A: He worked all the way up until around May or
10 so of 1996.

11 Q: What was he doing at The Groves?

12 A: He was a maintenance supervisor.

13 Q: So he was a maintenance supervisor at The
14 Groves until 1996?

15 A: Right.

16 Q: And then you're saying that Seagrove told
17 you that he walked off -- that he walked off
18 that job --

19 A: Yes, that's correct.

20 Q: -- as maintenance supervisor?

21 A: Yes.

22 Q: And why did he tell you he did that?

23 A: It was he couldn't deal with the pressure of
24 that property.

1 A: I had no way of knowing that until I worked
2 with him.

3 Q: Well, you worked with him. Wasn't he a good
4 technician?

5 A: Yes. I'm talking I didn't know that prior
6 to him coming to the company, what kind of
7 worker he was.

8 Q: Well, did Seagrove ever specifically tell you
9 he walked off the job at The Groves without
10 giving any notice?

11 A: That's what he told me.

12 Q: He told you he walked off without giving any
13 notice?

14 A: Yes.

15 Q: Why were you having that discussion?

16 A: He told me. In conversation we began to get
17 to know each other well enough that -- where
18 I guess he felt like he could volunteer that
19 kind of information to me. And he did, in
20 fact, tell me that.

21 Q: He -- he left?

22 A: He told me he walked off the job because he
23 couldn't stand the pressure any more at that
24 property. He just couldn't handle it.

1 Cook's resignation?

2 A: Yes, just the people within the office,
3 Janie Yonnell and --

4 Q: Yonnell?

5 A: Yonnell. She was the assistant manager at
6 the time.

7 Q: The assistant manager at Lauren's Way?

8 A: At Lauren's Way.

9 Q: And what did you and her discuss about Ms.
10 Cook's leaving Lauren's Way?

11 A: I mean, it was just some minimal talk that
12 she was out the door, she got a resignation.
13 It was kind of hush-hush. You know, just
14 general conversation. Just that she --

15 Q: So you have no idea why she resigned, do you?

16 A: No, I don't.

17 Q: Okay. And then you claim at some point in
18 -- you have no idea whether she gave any
19 notice of resignation either, do you?

20 A: No.

21 Q: So she may have given two weeks' notice of
22 resignation?

23 A: It's possible, yes.

24 Q: And it's your understanding that Ms. Cook

1 A: The Apartments at Stonehenge.

2 Q: And when did he leave at Stonehenge?

3 A: Around September of 1997.

4 Q: Was it 1997 or 1998?

5 A: I think it was 1997.

6 Q: Where were you at the time?

7 A: I was at Lauren's Way.

8 Q: Had you just gotten to Lauren's Way?

9 A: I had been there for -- since July the 15th.

10 Q: So Hudda had worked with you at Stonehenge,

11 is that right?

12 A: We never really -- well, we worked together

13 briefly because I was promoted over to

14 Lauren's Way.

15 Q: Shortly after Hudda came to work for

16 Stonehenge?

17 A: Right.

18 Q: Well, why did Hudda leave Stonehenge?

19 A: I don't know. Mike -- Howard Waddill just

20 told me that he was leaving.

21 Q: Who told you?

22 A: Howard Waddill.

23 Q: Just told you that Mike Hudda was leaving?

24 A: Yeah.

1 Q: Did he tell you that he was resigning or
2 that he was fired?
3 A: No, he didn't say either way.
4 Q: He didn't say? He just said he was leaving?
5 A: Yes.
6 Q: Do you know why he left?
7 A: No.
8 Q: Do you know if he gave any notice?
9 A: No.
10 Q: And you think that he was rehired by Drucker
11 & Falk at some point?
12 A: Yes, he was.
13 Q: And when was that?
14 A: It was around October, November of 1998.
15 Q: So about a year later he was rehired at
16 Drucker & Falk. Where was he rehired?
17 A: For an apartment community, new construction
18 property that was going up in the Wake
19 Forest area.
20 Q: What was he hired to do?
21 A: He was the maintenance supervisor.
22 Q: Supervisor? What had he been doing before he
23 was rehired?
24 A: I don't have a clue. I -- I know that

1 Q: And somebody informed you that Tony Bains had
2 previously worked for Drucker & Falk and was
3 now being rehired or --

4 A: I knew that -- I knew that by the -- the
5 safety meeting and speaking to Joe Swan.

6 Q: You knew what, that --

7 A: That he had worked for the company I think
8 previously and he was hired back and he was
9 working at Stonehenge Apartments.

10 Q: So Tony Bains was hired at Stonehenge
11 Apartments at the time you were working at
12 Lauren's Way?

13 A: Yes.

14 Q: What was he hired to do at Stonehenge?

15 A: I think it was assistant maintenance person,
16 but he didn't live on site. He had his own
17 place.

18 Q: And when -- and so who told you that Mr.
19 Bains had previously worked in a Drucker &
20 Falk managed apartment community?

21 A: I found that out at the safety meeting when
22 the -- one of the management people
23 congratulated him back.

24 Q: Do you know any of the circumstances

1 surrounding his leaving Drucker & Falk the
2 first time?

3 A: No.

4 Q: You don't know if he gave -- do you know if
5 he gave any notice of termination?

6 A: No.

7 Q: Do you know any of the circumstances
8 regarding him being rehired?

9 A: No.

10 Q: Other than Chris Seagrove, Denise Cook, Mike
11 Hudda, Tony Bains and Ralph Ray, are you
12 aware of any other people that were rehired
13 at Drucker & Falk after they had left the
14 company?

15 A: No.

16 [RECESS TAKEN - 3:38 P.M. TO 3:49 P.M.]

17 Q: Okay, we're back on the record. Mr.
18 Johnson, is there anyone you know of that can
19 back up your claims of discrimination by
20 Drucker & Falk?

21 A: The claim of discrimination itself?

22 Q: Yes, your claim --

23 A: There's no one that can --

24 Q: -- of racial discrimination against Drucker &

1 Q: So there's no one person you can think of
2 that you believe actually discriminated
3 against you -- rephrase that.

4 Is there any particular person at
5 Drucker & Falk that you believe really
6 discriminated against you because you were
7 black in 1999?

8 A: No.

9 Q: Okay. Let's move on. You also allege in
10 your Complaint that you suffered some type
11 of emotional distress, is that correct?

12 A: Yes.

13 Q: Explain what type of emotional distress you
14 contend you suffered.

15 A: I just -- just the rejection of the letter
16 itself. I mean, I thought I did a good job
17 at the company.

18 Q: You felt disappointed?

19 A: I felt discriminated against.

20 Q: I'm asking, did you feel disappointed when you
21 received the letter?

22 A: Yes, I felt disappointed. I was upset.

23 Q: But you didn't have any physical symptoms of
24 any distress, did you?

1 A: No.

2 Q: Did you have any mental symptoms of distress?

3 A: Yes.

4 Q: What?

5 A: Just my mental state was just -- I didn't

6 have a job. I just got rejected by a

7 company I used to work for and --

8 Q: But you did have a job -- oh, no. You had

9 quit the job. You'd quit Laurel Springs.

10 You never went to see a doctor about any

11 distress, did you?

12 A: No.

13 Q: Were you ever diagnosed by any doctor for

14 any type of emotional distress?

15 A: No.

16 Q: Did you ever suffer any symptoms at all of

17 distress?

18 A: No.

19 Q: What actions do you feel Drucker & Falk took

20 to cause you emotional distress?

21 A: The fact that I wasn't rehired back into the

22 company, the rejection letter, the knowledge

23 of white people being hired back into the

24 company and I wasn't allowed to come back

1 into the company, knowing that I did a good
2 job for the company was enough for me.

3 Q: You think somebody at Drucker & Falk actually
4 meant for you to suffer distress?

5 A: Do I think they meant it?

6 Q: Yes. Do you think somebody at Drucker &
7 Falk actually intended that you suffer some
8 deep, severe emotional distress?

9 A: No.

10 Q: Let me talk a little bit about the damages.
11 You claim in your Complaint that you've
12 suffered damages exceeding \$15,000. Where
13 did that number come from?

14 A: Mr. Shedor, which is my attorney.

15 Q: Yes. That's the number he came up with for
16 you?

17 A: Yes, sir. We -- we both talked about it, of
18 course.

19 Q: Well, how -- what did y'all -- how did you
20 come up with that number? What -- explain
21 to me the damages you contend you suffered
22 -- you contend that you suffered because of
23 actions of Drucker & Falk.

24 A: I mean, just by consulting with my attorney.